

1 BEFORE THE LAND RECLAMATION COMMISSION
2 STATE OF MISSOURI
3
4
5 Public Hearing on Industrial Minerals
6 In-Stream Sand and Gravel Rules
7
8 Thursday, March 25, 2004
9 1738 East Elm Street
10 Bennett Springs Room
11 Jefferson City, Missouri 65101
12
13

14 BEFORE: Jim DiPardo, Chairman
15 Bob Ziehmer
16 James Duley
17 Dr. Gregory Haddock
18 Jim Hull
19
20

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1 P R O C E E D I N G S

2 CHAIRMAN DiPARDO: We're going to call the
3 meeting to order, this being the public hearing on
4 industry minerals in-stream sand and gravel rules.

5 I was holding off until one of the other
6 commissioners got here, but he's tied up on a conference
7 call, so he'll show up when he shows up.

8 So in the meantime we're going to turn this
9 over to Mr. Larson and let him bring us up to date.

10 MR. LARSON: Thank you, Mr. Chairman.

11 It's my pleasure to welcome everyone here to
12 the hearing on the proposed sand and gravel mining rules.

13 We are now in the public comment period for
14 these rules. These rules were published on February 2nd
15 in the Missouri Register, and they will have a three-
16 month public comment period.

17 We're about two months, then, into the public
18 comment period. And this hearing is a part of that
19 public input process, if you will.

20 The hearing is specifically for the Commission
21 to receive comments from all interested people,
22 environmental groups, industry organizations, private
23 citizens. All kinds of people have been involved in this
24 process over the past three years that we've been working
25 on these rules.

1 It's not a forum for debate or discussion, if
2 you will. It is a forum for the Commission to hear what
3 people have to say about these proposed rules.

4 Speaking of the rules, they were the result
5 primarily of an effort by a work group formed under the
6 directive of this Commission. The work group worked for
7 many months to arrive at a product to present to the
8 Commission last spring at the May Commission meeting.

9 The Commission looked at that product and made
10 certain amendments to the work group's recommendation to
11 the Commission.

12 Those -- that final product as amended by the
13 Commission was adopted by the Commission last May and
14 voted on and approved by the Commission.

15 At that meeting, most groups did talk to the
16 Commission and address the Commission at that meeting.
17 Primarily -- I don't think there was one individual or
18 one group that was satisfied with -- entirely satisfied
19 with the total package.

20 Some groups felt that they were too
21 restrictive. Some groups and persons felt that they
22 weren't restrictive enough.

23 But, overall, specifically the group that
24 represents the mining industry and the Missouri Farm
25 Bureau addressed the Commission and said that although

1 they had reservations about these rules, they found them
2 to be acceptable as a package.

3 So what we're here for today is to allow folks
4 one last time to address the Commission, make their
5 feelings known about these proposed rules, as is the
6 process when the Department is proposing environmental
7 rules.

8 Finally, I would state that the public comment
9 period for these rules does run beyond this hearing. It
10 will run until May 1st.

11 As the program receives additional comments,
12 written or by e-mail, we will package those comments up
13 and ensure that the Commission gets those. And they will
14 also be posted on our website under the heading of sand
15 and gravel briefing.

16 So all of these comments will not only be made
17 available to you as a Commission but to the public at
18 large, anyone who has Internet access.

19 Of course, people who do not have Internet
20 access, if they would like to view these documents, can
21 certainly contact the Land Reclamation Program, and we'll
22 make those available to them.

23 With that said, I think I'm finished with the
24 introduction. If there is any questions, I'd be glad to
25 answer them; but if not, then I'll turn it over to the

1 Commission.

2 CHAIRMAN DiPARDO: Thank you.

3 MR. LARSON: Thank you.

4 CHAIRMAN DiPARDO: I have a list of people that
5 were requesting some comments. There is one, two, three,
6 four, five, six, seven, eight, ten or eleven people on
7 this list, and I've got some other cards of people that
8 would like to speak.

9 So I'd ask you to probably keep this to about
10 ten minutes or less, if you possibly could. But we do
11 want to hear from everybody, as long as you register with
12 us.

13 And when you get up to speak, spell your name
14 for the court stenographer, so she can get the correct
15 spelling of your names.

16 So to begin with, any comments from any of the
17 Commissioners? We'll get this thing started.

18 Everybody ready?

19 Randy Scherr, Mining Industry Council of
20 Missouri, would you like to speak first, please.

21 MR. SCHERR: Mr. Chairman, members of the
22 committee, my name is Randy Scherr. I serve as Executive
23 Director of both the Mining Industry Council and the
24 Concrete -- Missouri Concrete Association, both of which
25 have members that have significant interest in this

1 issue.

2 I don't need to tell anybody on the Commission
3 or staff or any of the guests here that this has been a
4 long and arduous process.

5 I remember going to my first sand and gravel
6 meeting back in probably the late '80s and early '90s,
7 also tracking legislation dealing with sand and gravel
8 back in, I think it was, '90 or '91.

9 I also tell the story --

10 MS. RANGLES: Mr. Scherr, I don't want to
11 interrupt you, but I omitted to have the court reporter
12 swear you in. This is testimony.

13 So is that fine?

14 Everyone needs to come up and be sworn in at
15 the beginning, and I'm sorry that I didn't think of that
16 before you started.

17 MR. SCHERR: That's fine.

18 (Witness sworn.)

19 MR. SCHERR: I continue to tell the story about
20 legislation in early 1990 -- early 1990s, filed by a
21 legislator from St. Louis, that I think in my 27 years
22 still holds the record for the most number of legislators
23 that testified against it.

24 It's pretty unusual to find legislators coming
25 in and testifying as witnesses either for or against, but

1 that particular bill dealing with sand and gravel had
2 seven legislators testify against it.

3 So I think that at least is an indication of
4 how sensitive this issue is.

5 We've been involved with the work group. I've
6 had members that have been very active with that work
7 group.

8 This has been, as I mentioned, a long and
9 arduous process, to try and find some middle ground
10 that -- what we feel would, number one, protect the
11 resources and, number two, allow the industry to continue
12 to operate.

13 And I think as we've gone through that process,
14 the product that you have before you that was recommended
15 by the -- by the work group, along with the amendment
16 that was adopted by the Commission three or four months
17 ago, I think, gives you -- gives us, and I think you, a
18 package that you can look at and say, it does achieve the
19 protection of the resources that you were looking for, as
20 well as allow the industry to operate.

21 I might also add that we have obviously members
22 that are concerned about this, but I think there are
23 issues that -- that we have to consider in looking at
24 this package that would be important to us.

25 One is, does it allow us to continue to

1 operate; number two, does it give us stability?

2 And as we went through this process, we had
3 concerns by members because permit conditions were
4 different for different operators, and we feel now that
5 we have that uniformity that would be provided by -- by
6 these rules.

7 So I think as a package, these are -- these are
8 certainly something that as an industry we feel that we
9 can live with and would be happy to try to answer any
10 questions.

11 CHAIRMAN DiPARDO: Comments?

12 MR. SCHERR: Thank you.

13 CHAIRMAN DiPARDO: Thank you very much.

14 Next on the list is Richard Dellerman from
15 Texas County.

16 (Witness sworn.)

17 MR. DELLERMAN: My name is Richard Dellerman
18 from Texas County, Missouri.

19 I'm here to share my understanding on riparian
20 ecology and geological formations of rivers and streams.
21 The gravel mining issue is my topic today.

22 I thank the Land Reclamation Committee for this
23 time to speak.

24 These were comments from the website of
25 Research Statement given by the Land Reclamation Program,

1 Attachment D of impacts of gravel mining, the sand and
2 gravel briefing response. I would like to address these
3 statements.

4 From Mr. Brown, from the Louisiana State
5 University, quote, gravel mining results in bank erosion;
6 two statement, muscles stranded in shallow pools, that
7 they choose to live in, but the pool level dries up as
8 the river level drops; therefore, gravel mining has
9 evidently eradicated the muscles.

10 My reply: Muscles live in sand or mud or are
11 attached to rocks and shallow water. Some of these
12 muscles during the early developmental stages are
13 parasitic on fish.

14 Now, the blue muscles, the eggs and sperm are
15 shed into the water, where fertilization takes place.
16 The embryo stays afloat for a month or so, held by a
17 bubble held in a thread from a film in a good flow of
18 clear water.

19 Now, the quote from the University says: These
20 are the types of muscles that live in the raised gravel
21 bed mounds, but dies when the river level drops --
22 lowers, unquote.

23 Gravel mining out these high gravel beds will
24 enable the river to hold a greater volume of water in a
25 rainstorm. By widening and deepening this raised gravel

1 mound will lower the water level farther below the
2 erosion line of the riverbed, inhibiting a likely erosion
3 from the rainstorm. This is how gravel mining prevents
4 bank erosion.

5 As gravel fills up a section of river, the
6 water becomes shallower. Some muscles choose to live in
7 the shallow places.

8 Muscles also live in the top part of the sand
9 and gravel bed that is near the size of the riverbed --
10 or river bank, will deepen these sections to build up
11 gravel.

12 These muscles won't have this raised section
13 for pools of water to exist and later dry up, unquote.

14 So these type of muscles will congregate on the
15 gravel beds located on the side of the streams and
16 rivers. So gravel mining will help stop the eradication
17 of the specific muscles.

18 The summary that I have is morphology is a
19 physical structure. This word is used to a physical
20 structure change in riparian areas of rivers, lakes and
21 swamp areas.

22 Changing the morphology of the rivers or
23 streams by the erosion of topsoil and the dying of
24 muscles are the results of raised river or streambeds.

25 Many of the expressed reasons -- reasoning from

1 the sand and gravel briefing given on the website are not
2 founded. Bridge engineers will tell you that sand banks
3 build up on one side of the river, will create a faster
4 current on the opposite side, that will wash out the land
5 that supports the side of the bridge.

6 The gravel taken out of these raised river beds
7 is a service to our county's environment. I believe that
8 the sand and gravel river mining companies are doing us a
9 service and should be given support in doing so.

10 Because of the Texas County Land Use Plan, the
11 elected County Commissioners are given the major impact
12 of all rivers and streams in our county.

13 The State Governor can give support to the
14 Texas County Stream and River Commission. The Texas
15 County's gravel mining operators are given support to the
16 State by paying money to them for gravel mining permit
17 tax.

18 Your support will show the people in Texas
19 County that our Governor -- governs for the people and by
20 the people. I respectfully request that you remove the
21 unfounded regulations off the Register.

22 Thank you.

23 Any questions?

24 CHAIRMAN DiPARD0: Thank you.

25 MR. DELLERMAN: Do I hand any of these out?

1 MS. RANGLES: It's entirely up to you, sir.
2 If you'd like to make them a part of the
3 record, you can give a copy to the court reporter and a
4 copy, if you want, to the Commissioners.
5 Whatever you give us will be given to the
6 Commissioners even if you don't have enough copies.
7 MR. DELLERMAN: Okay. I have enough copies
8 here.
9 MS. RANGLES: Okay.
10 (DELLERMAN EXHIBIT NO. 1 WAS MARKED FOR
11 IDENTIFICATION BY THE COURT REPORTER.)
12 CHAIRMAN DiPARD0: Next on the list is
13 Mr. Bob Parker from Texas County Farm Bureau.
14 MS. ADAMS: He's coming later.
15 CHAIRMAN DiPARD0: Okay.
16 MS. ADAMS: I'd like to reserve his time for
17 last.
18 CHAIRMAN DiPARD0: All right.
19 Well, let's move on to Betty Adams,
20 Vice-President of Ozark Chapter of Property Rights.
21 Is Betty here?
22 MS. ADAMS: I had signed up to be last.
23 Does that make any difference?
24 CHAIRMAN DiPARD0: Well, not on here.
25 MS. ADAMS: That's on the e-mail?

1 CHAIRMAN DiPARDO: You're on.

2 (Witness sworn.)

3 MS. ADAMS: Dear sir, let me commend you on
4 sticking with your original intent of accepting the
5 preferred wording on the work group that you asked to
6 refine, the proposed sand and gravel rules.

7 The ten-item set of rules you have adopted is
8 more reasonable than the original set you proposed.

9 Aside from the fact that a majority of the
10 working group voted in favor of keeping guidelines
11 instead of implementing rules, three important points are
12 still not dealt with: one, the economic impact; two,
13 curtailing landowners' rights to sell renewable
14 resources; and, three, showing a need for the laws.

15 To say the economic impact will not exceed \$500
16 is completely ludicrous. The regulations reduce the
17 amount of sand and gravel that can be removed
18 drastically.

19 A landowner does not receive much for each yard
20 of product removed, but the combined revenue lost
21 statewide certainly exceeds \$500.

22 I've heard both Reclamation and the Missouri
23 Department of Conservation staff members explain that the
24 new regulations would have no more impact than the
25 guidelines that commercial operators are already required

1 to follow.

2 True, but that's like saying, we tore the roof
3 off your house yesterday, so you won't get any wetter
4 tomorrow than you did today.

5 Limiting gravel removal and essentially
6 directing that gravel be taken from locations away from
7 the stream where it's less plentiful, as opposed to here
8 or in the stream where the gravel is, takes away the
9 rights of the landowner to manage and sell a renewable
10 resource from his land.

11 All through the proceedings and to this day, no
12 scientific proof has been presented to show a need for
13 these proposed rules. No real-time studies of the impact
14 of gravel removal from Ozark streams have been made or
15 presented as evidence of need.

16 A recent paper prepared by Michael Roell, MDC,
17 showed no review of what operators are doing in their
18 gravel mining operations and repeatedly -- and repeated
19 previously drawn assumptions, but did nothing to show
20 cause and effect or a need for rules.

21 So much has been made of headcutting, and that
22 is the reason stated for not wanting gravel removed below
23 water level. Yet, Roell reports that from aerial
24 observation, he is unable to detect mining below the
25 water surface.

1 If this practice is as devastating as has been
2 presented, you would think it would be easily spotted.

3 Evidently, he didn't find ruinous conditions
4 that warranted rules being placed on a landowner's rights
5 to manage his own property.

6 I respectfully request that you take these
7 regulations off the register.

8 (ADAMS EXHIBIT NO. 1 WAS MARKED FOR
9 IDENTIFICATION BY THE COURT REPORTER.)

10 CHAIRMAN DiPARDO: Next on the list is
11 Robert Temper, Ozark Fly Fishers Association.

12 (Witness sworn.)

13 MR. TEMPER: Thank you for this opportunity. I
14 appreciate to appear before you again.

15 The proposed rules as written should be
16 approved and implemented without further compromise.
17 It's been a series of compromises to end up to the
18 position we are.

19 I agree with Mr. Scherr, that it's not what
20 everybody wants, it's not what anybody wants, but it's
21 something we can probably all live with. Let's move
22 forward.

23 Let's implement them quickly. We've been
24 without rules for too long.

25 The uncertainty is what people are dealing

1 with. Putting these on the books will then prepare a
2 situation of certainty, and we can all move forward.

3 I left you with a picture of headcutting. This
4 came from the Department of Conservation on one of the
5 presentations they've made over the last year.

6 It shows below the highway, below the concrete
7 culverts that cross under the highway.

8 What happened to the stream when deposits were
9 made in-stream let the water work on the base and chew
10 it's way back up. It shows that the concrete culverts
11 prevented that. It shows the undisturbed original stream
12 bank to the top of the page above the highway.

13 Unfortunately, it's not a very good picture. I
14 have a colored picture that -- you know, if you'd like, I
15 could e-mail it to you. It's a little better copy. This
16 one is in black and white.

17 But I think a picture is worth a thousand
18 words. This is what can happen if you dig in the stream
19 below the waterline.

20 The current rules will prevent this. I want to
21 leave this as a picture of what it is you're protecting
22 in the streambed.

23 Thank you very much for the opportunity to work
24 with you and look forward to other opportunities in the
25 future.

1 Questions?

2 Thank you for your time.

3 CHAIRMAN DiPARDO: Thank you.

4 Leslie Holloway, Missouri Farm Bureau.

5 (Witness sworn.)

6 MS. HOLLOWAY: Thank you, Mr. Chairman, members
7 of the Commission.

8 Since last May when the Commission approved the
9 revised proposed rule for public comment, Farm Bureau has
10 continued to work toward resolution of the issue we have
11 raised in written correspondence, those being letters to
12 commissioners in April and May of last year and oral
13 testimony during the Commission's deliberations.

14 This issue is the need for landowners to
15 periodically remove gravel or have someone remove gravel
16 without a permit to keep a stream flowing, keep fish in
17 the stream and manage streambank erosion.

18 A few months ago we initiated meetings with DNR
19 Director Mahfood and staff to discuss how to address this
20 issue in a manner that would be more acceptable than the
21 legislation that was proposed last year.

22 As you may know, legislation introduced this
23 year takes a different approach, which came out of these
24 preliminary discussions.

25 The Department is by no means supporting this

1 legislation, but in order to meet the legislative time
2 frame, we put forth the best option we could, knowing it
3 would need to be refined.

4 We will continue to solicit the Department's
5 input, as well as others input.

6 Also, legislators have initiated discussions
7 with interested parties.

8 We appreciate the Department's willingness to
9 work towards a solution, and we have asked that they do
10 more to help the public understand that the landowners
11 we're talking about are not the ones causing the problems
12 that have been highly publicized in the course of this
13 rulemaking process, such as the seven examples of severe
14 damage caused by sand and gravel operations presented in
15 the work group booklet dating back to the 1980s, others,
16 1995, 1998, 2000 and 2002.

17 DNR and MDC officials have confirmed this point
18 on a number of occasions.

19 Our comments on the proposed rules reflect the
20 points I've just mentioned: one, landowners need to be
21 able to sell or otherwise dispose of gravel they don't
22 need without a permit; two, we remain greatly concerned
23 about the potential effect the rules could have on
24 landowners; and, three, we remain greatly concerned about
25 factual inaccuracies or misrepresentations pertaining to

1 sand and gravel excavation and conclusions drawn beyond
2 the scope of supporting data.

3 And that leads me into the next part of my
4 comments pertaining to the report.

5 I believe we're referring to the Roell report.
6 I'm not sure if that's the correct pronunciation. I'm
7 calling it the Roell report.

8 The first thing about this report that is
9 alarming is the fact that Department of Conservation
10 personnel spent 80 hours, apparently, piloting aircraft
11 and videotaping private and public property over the
12 course of 14 days, followed by analyzing the footage and
13 preparing the report, which was 75 percent funded by the
14 EPA.

15 We have a great concern about that kind of use
16 of State resources.

17 In the acknowledgments there are twelve MDC
18 staff mentioned and six nonMDC staff mentioned.

19 This is not research. This is a position
20 paper.

21 There is useful information, but we need to
22 make a distinction, and you've already heard that from
23 some of the witnesses today.

24 There is an important distinction between
25 scientific information and other types of information.

1 Mr. Roell also prepared the 1999 literature
2 review which was submitted to DNR Director Mahfood,
3 leading to the educational session held by the Clean
4 Water Commission in the 2001 proposed regulations.

5 The methodology itself is questionable. The
6 use of aerial observation and GIS analysis can be very
7 precise but can just as easily be subject to error,
8 especially if the data is not ground truthed.

9 If total numbers were extrapolated from samples
10 of 30 percent -- from -- a sample of 30 percent sample of
11 the fourth-order streams, as is indicated in the report,
12 statements such as those in the abstract misrepresent
13 conclusions that can be drawn from this study.

14 For example, there is a reference to active
15 instream gravel mines occurred at 407 sites, versus, what
16 would be more accurate to say, an estimated 407 sites.

17 There are other examples in the percentages
18 that are recorded in the summary of characteristics on
19 pages 8 through 10.

20 Generalizations are not providing an accurate
21 account of what is going on.

22 In the discussion section, potential adverse
23 impacts are cited, but data and observations showing some
24 correlation to any of the sites are lacking.

25 The way the information is presented by this

1 paper, it comes across as critical of all in-stream sand
2 and gravel excavation, commercial or private, permitted
3 or unpermitted, well managed or poorly managed.

4 Next I'd like to talk a little bit about the
5 rulemaking report.

6 The rulemaking report omits some information
7 that we feel is pertinent for the record.

8 The proposed rules were issued in 2001, the
9 original proposed rules, without public meetings and only
10 after comments were submitted raising objections were
11 public meetings held.

12 Although the work group was directed to make
13 recommendations on revisions to the proposed rules, a
14 vote requested by members of the work group on whether,
15 quote, the guidelines should become rules, end quote,
16 indicated a majority opposed changing from guidelines to
17 rules.

18 It is inaccurate to say that there are, quote,
19 no Federal rules regarding stream protection standards,
20 end quote, other than Clean Water Act provisions
21 pertaining to stream degradation.

22 The Corps of Engineers lost only part of its
23 jurisdiction pursuant to the lawsuit cited in the report.

24 In fact, we are currently working with
25 interested parties to obtain a Corps permit required for

1 a demonstration project on streambank stabilization using
2 excavation material.

3 DNR contends that because the rules pertain to
4 permittees only, only commercial operators and not
5 private landowners will be affected.

6 As I've indicated, we remain concerned about
7 how DNR will treat landowners who do not need gravel for
8 their personal use but periodically remove gravel or have
9 someone removal gravel.

10 Finally, regarding the scientific basis for the
11 proposed rules, it is important to emphasize that agency
12 officials and researchers admit that data with which to
13 assess the impact of in-stream sand and gravel excavation
14 in Missouri is lacking.

15 What data is available from studies in other
16 states is also limited, especially in its application to
17 Missouri.

18 DNR notes in the report, quote, none of the
19 research truly quantified stream protection measures, end
20 quote.

21 As stated in the USGS report, in-stream gravel
22 mining and related issues in Southern Missouri issued in
23 February 2002, there is very little information on gravel
24 mining and its related issues in Missouri.

25 In Missouri there is little information about

1 the extent and distribution of in-stream mining. This
2 information is needed for a science-based understanding
3 for future in-stream mining policy.

4 Finally, in closing my remarks, the buffer
5 modifications made by the Commission last May to the
6 draft proposed rule recommended by DNR staff brought the
7 proposal closer to the work group recommendations.

8 However, we concurred with the work group vote
9 against converting from guidelines to rules.

10 Despite their misgivings, the work group
11 members who voted against rules, in favor of guidelines,
12 were determined to be heard, and stuck with the process,
13 and we appreciate the Commission's recognition of their
14 efforts, but landowners will inevitably be adversely
15 impacted by the conversion to rules, which increases
16 DNR's latitude to take enforcement action against not
17 only permitted commercial operators but landowners who
18 sell or trade excavated sand and gravel without a permit.

19 This is another infringement on private-
20 property rights, and this kind of public policy decision
21 confirms landowners' fears, especially when no one who
22 they trust for technical advice can explain why they
23 cannot manage their property in the manner that they see
24 fit, and, in many cases, in a manner that not only was
25 approved but was recommended years ago, especially when

1 they know from experience how to improve the fishing and
2 keep from losing acreage to erosion.

3 We will continue to work to provide protection
4 for those landowners who simply want to manage their own
5 property using sound management practices without
6 government intervention.

7 Thank you for the opportunity to present these
8 views.

9 CHAIRMAN DiPARDO: Any comment?

10 Next on the list is a nonidentified
11 Commissioner of Texas County.

12 Who is that going to be?

13 MR. WHETSTINE: My name is Joe Whetstine,
14 W-h-e-t-s-t-i-n-e.

15 (Witness sworn.)

16 MR. WHETSTINE: Whenever you're a Commissioner,
17 I guess you get sworn at more than you get sworn in, but
18 anyway.

19 Today, as an elected official, I found out in
20 county government, we have to operate under a lot of
21 rules and regulations that the Constitution both of the
22 United States and the State of Missouri, as well as law
23 that has been established over the years, and sometimes
24 it's a little difficult to abide by them but we have to
25 do that.

1 And as I come before you today, I thank you for
2 the opportunity, and I'd like to share a few things with
3 you and maybe ask a question of you.

4 I think we're operating under the National
5 Environmental Policy Act of 1969.

6 Is that what you-all operate under, the NEPA
7 Act, National Environmental Policy Act?

8 Does anybody know what that is?

9 MS. RANGLES: This is supposed to be a chance
10 for you to offer comments.

11 MR. WHETSTINE: Okay.

12 MS. RANGLES: All right?

13 MR. WHETSTINE: So you won't answer any of my
14 questions?

15 Okay.

16 The National Environmental Policy Act is the
17 one that definitely deals with environment, both in the
18 State and the Federal, but, also, we in counties have to
19 operate under.

20 And in many -- many places -- and I'll cite you
21 a few, if you would care to listen -- under the
22 Title 1, Section 101, it states -- it says very clearly,
23 declares that it is the continuing policy of the Federal
24 government, in corporation with State and local
25 governments and other concerned private and public

1 organizations, to use all practical means and measures,
2 including financial and technical assistance and a manner
3 calculated to foster and promote the general welfare, to
4 create, maintain conditions under which man and nature
5 can exist, and productive -- pardon me -- and fulfill the
6 social, economic and other requirements of present and
7 future generations of America.

8 It goes on to say that with the Federal
9 government, that it applies to use all practical means to
10 try to accomplish these purposes and to coordinate with
11 State and local government.

12 And what I'd like to share with you today is
13 that we have communicated several times with the Bureau
14 of Land Reclamation. This is my first opportunity to
15 come here with you. But we've communicated several times
16 with you-all, but you've never made -- or taken the
17 opportunity to communicate with us on these rules and
18 regulations.

19 It states clearly in the NEPA Act that this was
20 to be done.

21 Now, we further support that. We do have a
22 land use plan that I think you-all should have a copy of.
23 I hope you've all read it. I won't ask you the
24 questions. She says you won't answer them. But I hope
25 you've all read it.

1 But that also requires under the NEPA Act that
2 we can have a local land use plan, which we do have. It
3 was filed with DNR and other agencies back in 19-- into
4 the year 2000, I believe.

5 So what I'm here to share with you today is
6 that these plans, both the NEPA and the county plan,
7 require that we have physical information, as well as
8 economic impact and environmental impact upon what these
9 rules and regulations, no matter what they are, and the
10 effect it will have on our community, on our county.

11 Gravel is a very abundant natural resource that
12 we have in Texas County. Texas County is a very rural
13 county, and we depend upon our natural resources. Timber
14 is another. Gravel is one of them.

15 So we are very -- that's the reason, I guess,
16 there is so many of us here. It's very important to us
17 that we do this and protect this.

18 We have many opportunities, I think, to speak
19 up for property rights and for things that affect our
20 people, and this is an opportunity whenever somebody
21 comes in and says you can't do this or can do this or
22 you're going to rule or regulate on certain things that
23 we can do on our land. We wonder where it will stop.

24 If we're doing this on gravel and our natural
25 resource for gravel concern, how long will it be before

1 you'll want to regulate timber? How long will it be
2 before you'll want to regulate the land use, however you
3 use the land, whether it be plowed or whether it be --
4 whatever it be done to it?

5 So we see this as another step in more
6 regulation, and we would -- we would oppose it.

7 I think in 1991 you set rules and regulations
8 that changed them, then, for the gravel mining industry,
9 where they couldn't mine below water level, and that
10 seemed to be well and good.

11 Most of our gravel operators in Texas County
12 were mining below gravel level. One of them in
13 particular had five sites that he was using. That's all
14 he needed.

15 Whenever you put that rule, that guideline, in
16 place, he had to go to seventeen sites.

17 Now, tell me: Is the disturbance from five
18 sites more than what the disturbance on seventeen sites,
19 when you can't go below gravel level?

20 So these are just some of the things that I
21 think -- my family has been in Texas County 150 years,
22 ever since there has been people down there. We've lived
23 with these rivers. We've seen them come and go. We've
24 seen them flood. We've seen drought. We have a pretty
25 good idea of what it's going to do and how it's going to

1 repair itself many times.

2 It appears to me that probably we have a
3 conflict between the city folks that like to come down
4 and fish in our streams and the locals that try to
5 maintain their streams and make use of the natural
6 resources available to us.

7 We know that you all are in the middle. You've
8 got to try to find a middle ground where you can satisfy
9 everybody. But we'd like for sure for you to consider
10 our side of the story.

11 We don't have a lot of money as local people
12 down there, but we would like for you to consider what we
13 have to say and the problems that we're dealing with
14 trying to maintain our economy, trying to maintain our
15 local culture, and we appreciate your consideration.

16 Any questions?

17 CHAIRMAN DiPARDO: No, sir.

18 MR. WHETSTINE: Thank you.

19 CHAIRMAN DiPARDO: Thank you for your time.

20 THE Prosecutor of Texas County.

21 MR. WHETSTINE: He wasn't able to come.

22 CHAIRMAN DiPARDO: Okay.

23 Has Bob Parker showed up yet?

24 MS. ADAMS: He's not in yet.

25 CHAIRMAN DiPARDO: Okay.

1 How about Robert McQuerry, ground owner of
2 Emminence, Missouri.

3 MR. MCQUERRY: Yes, sir.

4 (Witness sworn.)

5 MR. MCQUERRY: Hi. My name is Robert McQuerry.
6 I have a small campground in Eminence, Missouri. I've
7 done some streambank revetment work. I've watched the
8 river.

9 I think most -- most sites are like a case-by-
10 case study. Nobody can look at one site and tell what is
11 going to happen at another site. There are so many
12 variables, maybe a log jams up, turns sideways, but -- in
13 watching a section of ground over a period of time, you
14 become familiar with -- with cause and effect.

15 Anyway, some of the laws that were meant to
16 protect us in the past are -- are actually coming back to
17 bite us now. They're hurting our river, our economy,
18 causing excessive erosion and unnecessary property
19 damage.

20 It's kind of like a glass of water in a
21 restaurant. If they fill the glass completely to the top
22 with ice, you're only getting about a third of the drink.

23 So when our streams fill up full of gravel --
24 and then we may get -- and I'm speaking for the
25 Jacks Fork River, the area that I know the best -- we may

1 get 50 to 200 small floods before we get one major flood.

2 The small floods still drop gravel, but the
3 major floods actually cut and create a lot of damage on
4 us.

5 And the gravel buildup in the course of time
6 from the smaller floods, as trees and shrubs grow in this
7 time period of in between the major floods, sometimes
8 they become so abundant that then when the major flood
9 comes along, it pushes -- it pushes them in a different
10 direction, causing major erosion and property damage.

11 But it starts from, I think, every creek and
12 every tributary, the gravel starts moving towards the
13 river, causing the holes -- the deeper holes to fill up
14 and push the water -- and push the water out of its
15 banks, creating new damage and material into the stream.

16 I also realize that there may not be a cure-all
17 for everybody, but I hope that we can reach a happy
18 medium to remove the excess gravel in accordance with
19 common-sense guidelines to -- without permit, if
20 possible.

21 I think that less erosion and property damage
22 will improve our water quality, and the money received
23 from gravel from our own property will help offset the
24 removal of gravel, because it's very expensive.

25 Just two weeks ago I lost a front hub on a

1 backhoe. It cost me almost \$2,500 to fix it. About four
2 days ago my motor blew up in my dump truck. I don't know
3 what that is going to cost, but I'm sure it's
4 considerable.

5 It's expensive to remove gravel, and I ask that
6 we be allowed to sell gravel and to help -- to help
7 offset the cost of moving it, allow us to better our
8 streams and protect our property.

9 And I don't think anybody -- without a lot of
10 study on a particular site, I don't think an outsider can
11 possibly come in -- well, there is so many variables,
12 that I think the person who has a property and is looking
13 at a particular site, they are in a better position to
14 fix their property and -- so that it will create less
15 damage.

16 So owning a campground, I don't want to get rid
17 of the gravel. I have to keep enough gravel there so
18 that my campers will have a place to camp, but I want to
19 get rid of enough gravel so that the water -- so that the
20 water coming down on these floods will stay inside the
21 waterway and not be pushed out onto my campground and
22 create more damage.

23 On the one hand it's illegal to cause erosion
24 and on the other hand it's illegal to take gravel and
25 sell it, so that you can -- and if you can't afford to do

1 it in the first place -- basically -- basically our hands
2 are tied, and if there is any way that you guys can reach
3 a happy medium, we'd -- I would certainly appreciate it.

4 Thank you.

5 CHAIRMAN DiPARDO: Thank you.

6 Okay. We're going to move to the speaker
7 cards.

8 Mr. Godfrey, you didn't say if you wanted to
9 speak first, middle or last, but --

10 MR. GODFREY: It doesn't make any difference.

11 CHAIRMAN DiPARDO: Come on up.

12 (Witness sworn.)

13 MR. GODFREY: Riley Godfrey.

14 Vice-Chairman, as a landowner, I have been
15 taught over the years to take care of the land because
16 they're not making any more of it.

17 And in this sand and gravel, we have gone back
18 quite a distance in time and checked the records. And
19 these are published out of the U.S. Supreme Court,
20 U.S. 87th U.S. Court.

21 By an ordinance of 1787 for the government of
22 the Northwest Territory, it was enacted -- and I'd like
23 to read you just a portion of that.

24 Wisconsin wanted to become a State of the
25 Union. This ordinance of 1787 was so important that the

1 Congress of the United States declared them to be free to
2 the public, and so important was the provisions of this
3 ordinance at that time deemed by Congress that it was
4 imposed on Wisconsin as a condition to become a State of
5 the Union.

6 Consequently, Wisconsin did not become a State
7 for two years later.

8 There is other -- we have here the Supreme
9 Court. This ordinance of 187-- 1787 was enacted before
10 we had a Supreme Court of the United States.

11 The Supreme Court of the United States held its
12 first session in New York City on February the 2nd in
13 1790, and it so imposed on these that they -- that there
14 are three types of streams, A, B and C, or 1, 2 and 3,
15 whichever you decide.

16 Type 1, or A stream, shall be those streams
17 that are navigable and floatable. We have two in the
18 state of Missouri, the Missouri and the Mississippi.

19 Class 2 streams are those streams that are not
20 navigable but are floatable.

21 Isn't that right?

22 He's heard this before.

23 Those 2-type streams shall belong to all of the
24 states in which they flow or any state hereafter.

25 Class C, or 3 streams, is a stream that is too

1 small to float canoes, small fishing boats and logs. It
2 falls into the classification of private, nonnavigable.

3 Here, adjoining landowners not only own the bed
4 to the middle thread, but also have the exclusive right
5 to control the use of such streams. The general public
6 has no right to fish in it or use it for recreational
7 purposes.

8 And it goes on to say, rather, the landowner
9 has exclusive right to use the banks and it is -- and is
10 true for the remainder of this land, he has the right to
11 have people ejected for trespassing.

12 Now, when the first meeting -- or the second
13 meeting was held at Meremac Regional Planning over at
14 St. James, we were there. I was asked to be there. They
15 knew nothing about it.

16 I don't know whether you gentlemen have it or
17 not, but I've got a copy here right out of the book, and
18 it states, test of navigability of the streams, the
19 classifications and what I just read to you.

20 The United States Supreme Court has never heard
21 a case on two parts, freedom of religion and the freedom
22 to own land.

23 What you're doing here is -- in the Class C
24 streams is telling the landowner what he can do with his
25 land and what you're going to charge him to do it, or

1 you're going to let him do it.

2 And the reading is, a stream comes -- say it's
3 coming from west to east. When it passes your perimeter
4 line coming -- or you now own the minerals and the water
5 in that stream. When it passed your boundary line on the
6 east side, you no longer have any control over it.

7 And with the court rulings, it surprises me how
8 you can say or want to put into effect some rules and
9 regulations that charges the landowner of how he can use
10 his land. You shouldn't even be in it.

11 So I've got a copy of this here, and I'd like
12 to give it to you. Maybe you'd be interested in looking
13 at it.

14 Any questions?

15 Thank you.

16 CHAIRMAN DiPARD0: Thank you.

17 It looks like Steve Eder, Missouri Department
18 of Conservation.

19 (Witness sworn.)

20 MR. EDER: Good afternoon. My name is Steve
21 Eder, and I'm the Fisheries Division Administrator for
22 the Missouri Department of Conservation.

23 First let me say that the Department clearly
24 recognizes that the sand and gravel resource in our
25 streams is a critically important commodity.

1 It's not our intent to curtail the mining of
2 this resource, nor do we subscribe to the misconception
3 that one must exclusively select gravel or stream
4 resources to the detriment of the other.

5 The Department of Conservation understands that
6 efforts to establish excavation standards in the Land
7 Reclamation Program's regulations will not affect
8 existing permit exceptions -- exemptions -- excuse me --
9 for, one, individuals mining for personal use, or, two,
10 political subdivisions using their own equipment and
11 staff to obtain minerals for their own use.

12 Currently Missouri does not have established
13 excavation standards for in-stream mining activities.

14 As a result, permit conditions for individual
15 commercial operators often vary greatly, a fact that
16 increases the risk of adverse impacts to our stream
17 systems.

18 The Department of Conservation supports
19 establishment of sound, enforceable excavation standards
20 within DNR's existing in-stream mining regulations for
21 all commercial operators, large and small.

22 Standards would help ensure mining activities
23 are conducted in a method that provides Missouri stream
24 resources with a basic level of protection.

25 In summary, efforts to establish excavation

1 standards within in-stream mining regulations are
2 supported and would make progress toward addressing the
3 existing lack of consistency associated with mining
4 activities, and, secondly, provide basic extraction
5 criteria to protect Missouri streams.

6 The opportunity to share these thoughts with
7 the Land Reclamation Commission is greatly appreciated.

8 Questions?

9 Thank you.

10 CHAIRMAN DiPARDO: Thank you very much.

11 Linda Garrett.

12 (Witness sworn.)

13 MS. GARRETT: I come before the Commission
14 representing Texas County Commission and the citizens of
15 Texas County.

16 Which you are aware of, we're the largest
17 county in Missouri. That's why we keep showing up at
18 these meetings.

19 I'm requesting that the Land Reclamation
20 Commission withdraw the proposed in-stream sand and
21 gravel mining regulations from the Missouri State
22 Register.

23 I'm requesting this for the following reasons:
24 Number One, the Land Reclamation, nor DNR, has complied
25 with the Texas County, State of Missouri, Land Management

1 Plan, Section LD 4, WR2 and WR3.

2 As I've stated many times before this
3 Commission, the Federal government gives counties the
4 authority to adopt such a land management plan to protect
5 our counties from harmful regulations.

6 The second reason: DNR has not completed a
7 required economic impact study before placing these
8 proposed regulations on the State Register. They simply
9 made an unproven statement that the added cost to the
10 public and the private sector would be less than 500.

11 The court cases alone, if these regulations are
12 not removed, will be way more than \$500.

13 Number Three: Although DNR has supplied the
14 Commissioners with their theories of improper ways of
15 mining sand and gravel, these theories are just that and
16 have not been proven.

17 On the contrary, there are sites in Texas
18 County that can be proven that great damage has been
19 caused to farmland, county roads and have threatened
20 State highways because sand and gravel was not removed.

21 Number four -- and this one kind of upsets
22 me -- DNR has furnished false and misleading reports to
23 the Land Reclamation Commission.

24 I submit to the Commission -- or I will submit
25 to the Commission a five-page report that was completed

1 by DNR which contains many false and misleading
2 statements.

3 I sat on the work group that they refer to in
4 this report, and I'm very disturbed of what the report is
5 trying to indicate.

6 Time doesn't allow me to read the report, so
7 I've got it here for you, and I've highlighted some of
8 the false and misleading statements, and I request that
9 you read them carefully.

10 When members of this work group read this
11 report and we know it's a lie, how can we believe other
12 reports that have been prepared by DNR and expect them to
13 be right?

14 I also submit a letter I wrote to the Governor.

15 In this letter I stated how Missouri citizens
16 believe many of the State agencies have lost their
17 integrity, their accountability and right down common
18 sense, and I am fearful DNR is next on -- the next agency
19 on their list.

20 I want to thank you for the opportunity to
21 speak. Once again, I respectfully request that you take
22 these regulations off of the State Register.

23 Any questions?

24 CHAIRMAN DiPARD0: Do you want to elaborate on
25 a few of them while you're here?

1 Do we have time for her to do that?

2 MS. RANGLES: It's up to you.

3 MS. GARRETT: And I think we have quite a few

4 members --

5 CHAIRMAN DiPARDO: I'd like to hear what she's

6 got to say.

7 Is that all right?

8 MS. RANGLES: Ms. Garrett, would you mind

9 putting one here so it can be made part of the record?

10 Have you got enough?

11 MS. GARRETT: Yes.

12 MS. RANGLES: Thank you.

13 MS. GARRETT: If you look in your packet -- I

14 was up doing this -- I mean, this isn't the neatest

15 thing, but I think you can read it. I was up kind of

16 late writing some of this.

17 CHAIRMAN DiPARDO: We're dealing with the --

18 MS. GARRETT: The ones with the yellow

19 highlights.

20 CHAIRMAN DiPARDO: -- highlighted --

21 MS. GARRETT: There you go. And you should

22 have comments besides it.

23 CHAIRMAN DiPARDO: Okay.

24 MS. GARRETT: One of the things -- because I

25 don't want to go through all of this.

1 CHAIRMAN DiPARDO: That's fine.

2 MS. GARRETT: Look on your second page.

3 Look on the second page, Right at the top.

4 This is a statement. Today it is unknown what

5 the effects of sand and gravel extraction from stream

6 environments will be.

7 What does "unknown" mean to you guys?

8 To me it means it's not known.

9 But they continually say there has been damage

10 from gravel mining, gravel -- gravel mining has been done

11 for years without any permanent damage or is stated

12 unknown damage.

13 One of the things I really -- well, you'll just

14 have to go through it, because --

15 MS. ADAMS: I want to hear it.

16 MS. GARRETT: The biggest thing that bothers me

17 is this report sounds like the working group all got

18 together and made some rules.

19 Well, the ones that was in this work group went

20 there with good intentions, but at the very beginning we

21 was honest with DNR.

22 The majority said, we don't want regulations.

23 These guidelines are working. Yeah, there is some that

24 may have damaged something.

25 In fact, in one of the DNR meetings -- or the

1 work group meeting I asked: If somebody damages -- did
2 something to your land, did something that would cause
3 damage to your land, wouldn't you take it to civil court?

4 And it was stated they couldn't prove that they
5 did the damage.

6 Well, then, how can DNR Conservation prove --
7 if a court couldn't prove they did the damage, how can
8 DNR or Conservation prove that damage was done by gravel
9 mining?

10 It could be done by a lot of different things.

11 You don't want me to read all of that, do you?

12 CHAIRMAN DiPARDO: Well, I just wanted you to
13 touch on maybe a couple of the ones that you're upset
14 about the most.

15 MS. GARRETT: The most is that it sounds like
16 the majority of the people was absolutely behind these
17 rules and regulations. In fact, I think -- let me see.

18 Number one, we was told that we wasn't there to
19 develop any rules, that we couldn't make rules, that we
20 was just there to discuss the wording and stuff.

21 And then you see on -- well, it's not got --
22 it's not got pages.

23 I guess it would be the third page. It says:
24 A work group appointed by Land Reclamation Commission met
25 monthly to craft these proposed rules.

1 Well, there again, to craft to me means to
2 make. This work group didn't have the authority to make
3 rules. It's, I guess, your guys authority.

4 But it sounds like -- if somebody didn't sit on
5 this work group and read this, they'd think the whole
6 work group went, got together, made these rules, and we
7 was just tickled to death with them.

8 We stood up -- the majority of the people stood
9 up and said, we do not want these rules.

10 At one time it was said that we would make some
11 word changing if it would go with the guidelines.

12 I mean, the guidelines could have used some
13 changing in some of the words. There is some things in
14 the guidelines, like was mentioned before, that has made
15 it extra hard on gravel mining operators.

16 Like I forget what somebody said a while ago,
17 one of the gravel mining operators had, what, five sites,
18 and then the guidelines came in and now they've got
19 seventeen sites.

20 You know, that's -- there was some improvement
21 on the guidelines, but these regulations, we -- we don't
22 believe it's broke, so we don't think it needs fixed, and
23 we don't think -- I mean, you hear scientific studies,
24 and like somebody mentioned a while ago, you know, you
25 can pretty well prove anything you want to with some kind

1 of a study. But no one has come down to Texas County and
2 seen what we're dealing with down there.

3 We're dealing with bridges washing out, and
4 it's not because somebody took gravel -- mine gravel up
5 above the stream. It's been because the gravel wasn't
6 taken out.

7 Some of those underlined -- or undermining
8 pictures that you've got more than likely is from gravel
9 not being taken out someplace.

10 CHAIRMAN DiPARDO: I'm going to play the
11 devil's advocate here.

12 MS. GARRETT: Go ahead, because I'm --

13 CHAIRMAN DiPARDO: You're ready?

14 MS. GARRETT: I'm ready.

15 CHAIRMAN DiPARDO: Okay.

16 Well, why don't you go take the gravel out
17 above the bridge?

18 I mean, what --

19 MS. GARRETT: Why don't we?

20 CHAIRMAN DiPARDO: The county, you're allowed
21 to do that. There is no --

22 MS. GARRETT: Number one, Texas County don't
23 have a Road and Bridge. We don't own one piece of
24 equipment.

25 CHAIRMAN DiPARDO: Well, why is that?

1 MS. GARRETT: Because we're a township form of
2 government.

3 CHAIRMAN DiPARDO: So you farm everything out?

4 MS. GARRETT: Exactly.

5 But if we was -- if we had equipment and we
6 went in there, according to these regulations, we would
7 have to do it -- we wouldn't have to have a permit, but
8 we would have to do it according to these regulations.

9 And some of these regulations cannot be -- you
10 can't mine some of the gravel that needs to be mined in
11 Texas County with all of these barriers and these buffer
12 zones and these willows that are growing. You just can't
13 do it.

14 I mean, if you don't go in there and do it the
15 way it was done probably ten years ago, you're going to
16 have what we've got right now, and it's clogged-up
17 creeks.

18 It's Big Piney, where used to you could have
19 good canoe trips. What is that doing to our economic
20 impact on tourism? Now you're dragging.

21 And a lot of people think, well, it's not going
22 to affect -- it might affect maybe Texas County but it's
23 not going to affect me.

24 It's going to affect everybody in Missouri.
25 Because when you start -- when it starts costing more --

1 and it will cost more to take gravel out of the creek
2 under these regulations, you're going to be paying more
3 for your highways.

4 And look at MoDOT right now? MoDOT doesn't
5 have money.

6 You're going to pay more for your buildings.
7 You're going to be paying more for your bridges.

8 And we've already went through this a couple of
9 times, you know -- and I know there is good intentions in
10 this group.

11 But you know what, good intentions don't always
12 work. And there has been good intentions before that has
13 really messed up, and they've been repeated here two or
14 three times, and the otters, the multiflora roses.

15 When that happens the Commission says, oops, we
16 made a mistake. But we live with it, you know, and it's
17 our money that we've lost.

18 When it starts going over costing everybody in
19 Missouri, they're saying, why don't we have the money?
20 Oops. You know, I'm sorry. We made a mistake.

21 Let's not make the mistake. Let's really do
22 some scientific study and come down to Missouri and let
23 us show you, we don't have -- we don't have guns like you
24 were saying. We are a friendly bunch.

25 CHAIRMAN DiPARDO: I know. I was just kidding.

1 MS. GARRETT: But come down, sit down and look
2 at the creeks. And the people that live in St. Louis and
3 wherever, come down.

4 I'm sure it's a complete different story than
5 it is up north. I mean, we're fighting for our
6 likelihood. I hate to use the word "fight," but we're
7 fighting for our livelihood and we're going to continue.

8 Thank you.

9 CHAIRMAN DiPARDO: Thank you.

10 Next on the list is Ted Heitsel (sic).

11 Did I pronounce that right?

12 MR. HEISEL: Heisel.

13 CHAIRMAN DiPARDO: Heisel.

14 (Witness sworn.)

15 MR. HEISEL: My name is Ted Heisel. I'm the
16 Executive Director of the Missouri Coalition for the
17 Environments in St. Louis.

18 I have to say, even though it's a long drive
19 for me, I'm getting kind of tearied at this long process
20 that is coming to an end. I feel like I'm coming to a
21 family reunion or something now when I come to these
22 things.

23 We have about a thousand members throughout the
24 State of Missouri. I mean, to be honest, most of them
25 are in the St. Louis area, but many of our members use

1 the resources throughout the State of Missouri, whether
2 it's canoeing, fishing, hiking, swimming in various
3 streams throughout the state.

4 As do many, many Missourians -- I don't have to
5 tell this Commission about how many Missourians value,
6 you know, the Ozark streams, the streams throughout the
7 state. Thousands or millions of people use them every
8 year for either fishing or canoeing.

9 But gravel mining does -- can and does have
10 negative impacts on streams, and so that's why our
11 organization is so concerned about this rulemaking and
12 legislative efforts dealing with gravel mining, and it's
13 one reason that I've always showed up to most of these
14 hearings and participated in the stakeholder group.

15 We at the coalition, we also get calls
16 occasionally on a number of issues from citizens around
17 the state. Gravel mining is one of those things where
18 we'll occasionally get a call from someone who either
19 sees -- sees a dozer in a stream or something and is
20 concerned about it and will call us and wonder what to
21 do, and we will send them to DNR.

22 For that reason we feel it is important that
23 DNR has the regulatory tools in place to deal with
24 problems out there on the streams.

25 We appreciate the effort that this Commission

1 has made and the stakeholder group made to come up with
2 these rules.

3 But I think as you know from our past comments,
4 we -- we don't agree with all of the provisions in this
5 rule package. There are certain things that we feel need
6 to be strengthened.

7 The buffer, of course, is one of those things,
8 the streamside or the waterside buffer.

9 You're well aware, back in '94, I think it was,
10 when the previous guidelines were developed, that was
11 sort of a compromised package.

12 And what we have here, in our opinion, is sort
13 of a stepping away and a weakening of what was already a
14 compromise that was created in the early '90s.

15 I wasn't participating in that then, but that's
16 sort of as it's described to me.

17 So we feel that the buffer on the waterside
18 needs to be twenty feet, not ten feet. There are
19 variances allowed.

20 If there is a situation where mining is going
21 to take place on a smaller stream and it's not going to
22 harm the stream, then DNR has the ability to grant that
23 variance.

24 But we feel it's very important that there be a
25 clear line and that the clear line be adequate to

1 actually protect most of the waters in the state.

2 The other thing is the high bank -- actually,
3 not the high-bank vegetative buffer, but the buffer
4 between the mining and the high bank.

5 I believe there used to be a concrete
6 requirement about how wide that needed to be. Now the
7 language just, it needs to be adequate.

8 And I think -- I think that most permit writers
9 will tell you that when they don't have any definite
10 guidance and it's just sort of an adequacy requirement,
11 that it's very difficult both to write the permit and
12 then to enforce something when there isn't anything clear
13 coming down from the Commission about what is generally
14 accepted as an adequate buffer.

15 Depth of mining is something we've also been
16 concerned about.

17 It's my recollection, although it's been a
18 while since I looked at this, I think other states have
19 requirements that may be, you know, one foot above the
20 water level or one foot above the bottom of a dry stream.

21 The way this rule is currently written, it's
22 pretty loose.

23 The general standard is no lower than the water
24 in a wet stream and no lower than the bottom of a dry
25 stream, but there are sort of fuzzy words in there that

1 is also going to make it very difficult for DNR, I think,
2 to implement this.

3 Namely, there are exceptions allowed for any,
4 quote, appropriate reason.

5 And when you get into enforcing these things
6 and when you get into writing permits or when you're in
7 an environmental organization or a citizen and you want
8 to monitor permits and you want to comment on permits,
9 it's very difficult to sort of monitor that activity when
10 the only requirement is that it's appropriate.

11 How do you -- how do you measure what is
12 appropriate and what -- what sort of variables are used
13 to set that?

14 The other thing is the diameter of the
15 vegetation.

16 Of course, this gravel mining is only supposed
17 to take place on gravel bars that are sort of open and
18 loosely formed. They don't have forests growing on them.

19 The requirement previously was that there
20 couldn't be vegetation where mining takes place that was
21 greater than one inch in diameter.

22 And that was sort of expanded in this rule to
23 be one and a half inches in diameter at breast height.

24 You can have a pretty big tree or, you know, a
25 young forest actually on a gravel bar, where you have a

1 inch and a half diameter at breast height. That's a
2 pretty sizeable stand of willow. It could be a pretty
3 sizeable willow.

4 And I don't think that originally when these
5 guidelines were developed, that it was not the intent to
6 basically go out and clear a vegetated gravel bar that
7 had heavy vegetation on it and allow that to be mined
8 away.

9 So I would encourage you to take a look at
10 maybe going back to a smaller vegetative diameter, to
11 prevent the clearing of some of those gravel bars that
12 are more stabilized, in place, and are not as appropriate
13 for gravel mining.

14 And that's all I have. Thanks.

15 CHAIRMAN DiPARDO: Norman Leppo.

16 Did I do that right?

17 MR. LEPP0: Right.

18 (Witness sworn.)

19 MR. LEPP0: Mr. Chairman, members of the
20 Commission, my name is Norman Leppo. I'm here
21 representing some 300 members of the Missouri Smallmouth
22 Alliance. I was here last year in a similar capacity.

23 And I'm here today to urge the enactment of the
24 proposed regulations for in-stream gravel mining.

25 In a perfect world, we would like to see some

1 additional restrictions, but I'm routinely reminded that
2 we do not live in a perfect world.

3 And so those of us who take fishing rather
4 seriously are often disregarded or not taken themselves
5 very seriously.

6 But I'd like to just read very quickly a piece
7 out of the December 2003 issue of Missouri Game and Fish.

8 The average angler spends more than \$1,200 each
9 year on fishing equipment and trips, according to the
10 American Sports Fishing Association, an organization of
11 sporting goods manufacturer, State and Federal wildlife,
12 land and water management agencies, conservation
13 organizations and individuals.

14 In 2001, three years ago, Missouri anglers
15 fishing-related purchases totaled \$832,776,355. Those
16 purchases help fund approximately 15,000 jobs in the
17 State of Missouri.

18 This will give you at least some understanding
19 of the economic impact of the entire fishing industry.

20 And I want to say to you that I know of no
21 person who fishes who is not in favor of enforceable
22 regulations for in-stream gravel mining.

23 And we're proud to be included in this group,
24 and we do urge, once again, the Commission to adopt the
25 language as written.

1 Thank you for your attention.

2 CHAIRMAN DiPARDO: Thank you.

3 Mr. Hardecke.

4 (Witness sworn.)

5 MR. HARDECKE: My name is Ron Hardecke, and I'm
6 a farmer from Owensville, Missouri. I serve on the Board
7 of Directors for Missouri Farm Bureau.

8 And like it's already been stated, it has been
9 a long, interesting process. I was a member of the work
10 group. And I thank you, the Commission, for putting the
11 work group together.

12 Initially these regulations were proposed to be
13 put through on short notice, and I appreciate your
14 willingness to let us come in and speak to the issues and
15 how they affect us.

16 I believe that these regulations, if they are
17 enacted, will have a negative impact on landowners and
18 their ability to have gravel removed from their streams.

19 Over the past 20 to 30 years we've seen a major
20 decrease in the amount of gravel removed from streams and
21 used for road materials, building construction and such.

22 And as a result of that, we're seeing a
23 tremendous buildup of gravel in the streams, particularly
24 in Southern Missouri. And as a result of that,
25 landowners are having severe problems with streambank

1 erosion caused by the excessive buildup of gravel.

2 When we talked to representatives of the
3 Missouri Department of Conservation and Missouri
4 Department of Natural Resources, they always refer to
5 their constitutional mandate to manage the natural
6 resources of the state, or in case of MDC, the forest,
7 fish and wildlife resources.

8 And that is the thing that landowners are
9 asking, is to have the ability to manage the natural
10 resources which they've been entrusted with.

11 Buildup of gravel in the stream channel -- and
12 that is something else that I want to make explicitly
13 clear.

14 When we talk about the buildup of gravel, we're
15 talking about in the existing channel, and that's where
16 landowners have a problem.

17 It's often referred to that landowners are
18 wanting to channelize by removing gravel.

19 That's a different situation completely,
20 because we're interested in maintaining the existing
21 channel between the -- between the high banks.

22 Because whenever the channel fills up with
23 gravel -- and others have stated before, there is no
24 place for the water to flow, especially in the high-water
25 events.

1 And also it's been stated before that
2 streambank damage does not occur during the normal flow.
3 It's always in some high-water event.

4 And as the gravel builds up above the water
5 level in the stream, vegetation begins to grow, and then
6 as the vegetation grows, it causes more gravel to settle
7 out in a high-water event. As the gravel bar grows and
8 the vegetation grows, it puts more pressure on the
9 adjoining bank.

10 So that's the major reason that landowners need
11 assistance in being able to get gravel out in an
12 economical manner.

13 Once we lose these riparian corridors, we don't
14 get them back, and that's why landowners are very
15 concerned about the problems that they have here.

16 When you lose the timber off of your riparian
17 corridor, you won't get it back.

18 And I might add, when we talk about stabilizing
19 the gravel bar and leaving it because it's stable and
20 letting the eroding bank go ahead and erode, I would ask
21 you to consider the dynamics of the stream.

22 Once you erode that high bank, you will never
23 have sedimentation to fill that in to the level of that
24 high bank.

25 So that's why it's important that we allow the

1 removal of the gravel, to prevent the loss of those high
2 banks which form the existing channel.

3 Throughout the work group process, it was
4 always referred to as where is the scientific data that
5 says it's okay to move gravel?

6 Well, landowners have been in the business of
7 taking care of their land and managing it, not keeping
8 records. So there isn't a lot of that data available.

9 But in an effort to try and gather some of that
10 data, over the last year and a half we've been working
11 with the Missouri Department of Conservation and Natural
12 Resources Conservation Service, to get a pilot project
13 started, to gather data concerning using in-stream
14 materials to repair streambank erosion and to gather --
15 to get some of that data.

16 The result of that has -- like I said, it's
17 been a year and a half and we're still -- have not done
18 any of the projects. We're still in the permitting
19 process.

20 So that's why it's very difficult for
21 landowners, because it could have been fixed in a day or
22 two, but we've been waiting a year and a half on the
23 permits, and in that time we've lost millions of tons of
24 topsoil out of some of these sites.

25 And I've got a couple things I'll pass around.

1 We can get you copies, if you'd like, for everyone.

2 First is a sheet that I've made to highlight
3 the natural resource concerns associated with the problem
4 of gravel buildup, and here is a couple of aerial
5 photographs of a site.

6 This is 30 years ago and this is today.

7 The circled area -- they're a different
8 scale -- but you can see what the buildup of gravel and
9 no removal has done in the last 30 years.

10 We did have a 100-foot riparian corridor,
11 whichever one says that that's important, and landowners
12 agree. But due to no maintenance, due to the increasing
13 regulatory climate, that landowner has not done anything,
14 and we have had a severe loss of natural resources.

15 On the sheet I've outlined three areas of
16 concern regarding gravel removal and what landowners, as
17 well as environmentalists, should be concerned about.

18 One is soil erosion, another is fish habitat
19 and the third is water quality.

20 First on soil erosion. We've been working on
21 soil erosion for the last 60 years in this country, and
22 we've made great strides. However, the one place we have
23 not looked is at streambank erosion. Everybody wants to
24 walk away from that and act like it isn't occurring.

25 And that's where the buildup of gravel in our

1 streams is a major cause. So the two are very closely
2 tied together.

3 I think people on both sides of this argument
4 will agree that fish habitat is important, and it's
5 diminishing.

6 People wonder why the rivers are filling up
7 with gravel. Well, if you don't take it out, they'll
8 fill up. And when they -- when the river is full of
9 gravel, there is not as much habitat for the fish.

10 So I think it's in all of our best interest to
11 maintain our rivers and creeks so that we are able to
12 have a good fish population.

13 The third point is water quality. Water
14 quality is a big issue today.

15 It's such an issue that water quality and
16 sediment in the water is being used to list water bodies
17 on the impaired waters list.

18 If that is going to be used, then I think it's
19 time that we do something about it, or allow landowners
20 to do something about it.

21 Because when you have a buildup of gravel in
22 the stream and it erodes the adjacent streambank, that
23 material goes into the river.

24 The gravel portion cannot -- cannot filter in
25 with the water and get out on the -- on the floodplain.

1 The gravel portion stays in the channel and builds up.

2 Streambank erosion is where the gravel comes
3 from. However far you go back up the watershed, that's
4 where it comes from.

5 So I think that we need to look at this issue
6 from an environmental standpoint, that we want to do the
7 best for the environment, and I would ask that you-all in
8 your position allow landowners the most flexibility in
9 being able to manage the natural resources that they're
10 entrusted with.

11 So in that regard, I think it would -- I would
12 ask you to leave the current guidelines in place and
13 continue to work with landowners to improve their
14 property.

15 Thank you.

16 CHAIRMAN DiPARD0: I had a question for you.

17 When you're referring to permits that's taken a
18 year and a half, what are you talking about?

19 MR. HARDECKE: A Corps of Engineer's permit.

20 Well, that hasn't taken that long, but working
21 through the agency process, is getting everybody on
22 board, has taken -- we first started talking about this
23 was a year and a half ago, and we're in the Corps' permit
24 process right now.

25 And I realize that's a separate issue, but you

1 can't hardly separate the two, because we're dealing with
2 a buildup of gravel in our streams, causing excessive
3 streambank erosion, and the streambank erosion is the
4 source of the majority of the gravel that people are
5 concerned about, and losing fish habitat and negatively
6 impacting water quality.

7 CHAIRMAN DiPARDO: What's the Corps -- I mean,
8 what are you --

9 MR. HARDECKE: A 404 permit, to use the
10 in-stream material to repair the damage, and to open the
11 channel so that the existing channel can be maintained
12 and not cut a new channel, and not lose our riparian
13 corridor.

14 CHAIRMAN DiPARDO: Other questions?

15 Any other Commissioners want to comment on
16 that?

17 I'm kind of curious why --

18 MR. HULL: Jim, I might add that on top of the
19 404 permit, there would be a 401 water-quality
20 certification that follows the 404 permit.

21 MR. HARDECKE: And DNR's officials have been
22 involved in the process.

23 CHAIRMAN DiPARDO: Anything else?

24 MR. HARDECKE: Thank you.

25 CHAIRMAN DiPARDO: Thank you.

1 (HARDECKE EXHIBIT NOS. 1 THROUGH 4 WERE MARKED
2 FOR IDENTIFICATION BY THE COURT REPORTER.)

3 CHAIRMAN DiPARDO: Bob Parker.

4 MR. PARKER: Do you mind if I brought some
5 paper up there and drew a little picture?

6 CHAIRMAN DiPARDO: No. Fine.

7 (Witness sworn.)

8 MR. PARKER: I'm left-handed, so this might be
9 a little problematic for everybody to see this, but I'll
10 do the best I can.

11 We've -- through the hearings I've -- I was on
12 the work group that worked on this, and we asked a lot of
13 questions about the science and economics and things, and
14 we were really never able to get into the part of what is
15 going on in the stream. And I just wanted to talk to it
16 for a minute.

17 Here is the streambank. Okay? This is a
18 gravel bar. Okay? This is the streambank with
19 vegetation. Okay? Here is the water running down
20 through here.

21 That's pretty simple, but you kind of get the
22 idea.

23 Okay. Now, none of us are saying any of this
24 brush should be touched. Okay? We all agree that that
25 needs to be there to protect this outside bend of the

1 stream from erosion.

2 Those roots and things are going to hold that
3 together. But there are two sides to a stream. Okay?

4 Now, you have this side where the gravel is
5 building up. The gravel builds up on the slower side of
6 the stream. Okay?

7 Now, what they're proposing to do with this
8 buffer, they want to buffer on this side, which that is
9 great, to put a buffer on this side.

10 This side, you want a ten-foot buffer all along
11 the side of the stream here. And you want this to grow
12 up in brush. Okay?

13 Now, I'm not aware of any study that has ever
14 been done on what happens when you do this, but I think
15 common sense will tell us what is going to happen.

16 We can look at many examples in Texas County
17 and the Potter's Creek example, and this is exactly what
18 is going on.

19 You've got all of this brush here. This is
20 going to slow down the water. Okay?

21 You're going to have more gravel deposit in
22 this area as the brush -- as the brush grows. You're
23 going to have gravel deposited throughout this area.
24 This stream -- this side of the bank is going to build
25 up. Okay?

1 Now this gravel cannot be mined beyond this
2 line. Well, the gravel is going to continue to build and
3 build and build and build and build. Now, what is going
4 to happen when this water is forced through this little
5 channel here? As it gets constricted, it's going to put
6 extreme pressure on this opposite bank.

7 If you're in a car and you're going 60 miles an
8 hour down the highway and you're leaning against the side
9 of the door, and I take a little curve, just a little
10 curve, you'll feel a little pressure against the side of
11 the door. Right?

12 If I take a sharp curve at 60 miles an hour,
13 that water is going to go about the same speed. It may
14 slow down a little bit because there is a curve. I don't
15 know exactly. I'm not a hydrologist. But it's going to
16 have more pressure, just like in your car. You take a
17 tight curve, you're going to lean against that. Okay?

18 You have a tremendous amount of pressure
19 working against this streambank when this gravel builds
20 out here and goes on.

21 Now, this buffer strip here, you cannot remove
22 this material. Now, this seems like a real common sense
23 issue here. We were never able to -- we have not talked
24 about any of this in this whole process.

25 This is the first time I've ever been able to

1 stand up and talk about this.

2 Now, does this -- does this make sense to you

3 guys? Does this seem to be a problem?

4 If we have this buffer strip on this side, we

5 cannot remove this gravel.

6 Let me draw it just a different way here. I'm

7 glad there is lots of paper here.

8 Here is the stream -- here is the streambank.

9 Okay? Here is the gravel side. Here is the water level.

10 Okay?

11 Again, we want brush. We want brush all over

12 this bank. We want to save this bank. Farmers don't

13 want this bank to wash away. Fishermen don't want the

14 thing to wash away. None of us want it to wash away.

15 Okay?

16 We start doing this buffer strip here. We've

17 got brush in here. It's going to slow down the water

18 through here. It's going to cause more gravel to be

19 deposited inside those willows, or whatever kind of brush

20 it is. This is going to continue to build and build, and

21 it's going to put pressure onto that streambank.

22 Can everybody see that?

23 Okay?

24 Another problem that I see -- and I'm not a

25 gravel miner. I'm just a rancher.

1 But another problem with this buffer strip --
2 okay. We go here, a streambed again. Here is your water
3 level.

4 Okay. We've got a gravel miner out there.
5 He's trying to do a good job. He's taking some material
6 off. He's going to set it ten feet back here. He's
7 going to strip some gravel off here.

8 Okay? He's got -- say he's got ten feet right
9 here. Okay?

10 Okay. Say he stays outside of this ten-foot
11 buffer. What happens when you get a little thunderstorm
12 in the summer upstream? Maybe it doesn't even rain here.

13 He's done this mining. You've got somebody
14 that is going to inspect the site or you have a Sierra
15 Club member that is going to float the stream or
16 something.

17 He comes along here. This water is raised up
18 six inches. Well, a six-inch rise on a slope like this
19 is going to -- could mean several feet, but that's going
20 to come in on that gravel.

21 Now, who is going to figure out how far back he
22 was from that gravel?

23 Do you see a problem there?

24 I mean, this is some common-sense stuff, and it
25 was never discussed in any of our meetings, never

1 discussed.

2 I talked to the Dean of the Mines in Rolla
3 about these issues, the guy that trained many of you in
4 DNR, the school. I mean, that's what he said. I don't
5 know who specifically.

6 I asked him, show me the textbooks. How does
7 that work? I want to understand the issue.

8 He said, we don't have anything on this. He
9 said, you know, we have all of these guys that are saying
10 all of this stuff. Where did they learn it? They didn't
11 learn it here. Where did they learn it?

12 So I think one of the problems here is that
13 everyone is thinking streambanks. They think, oh, it's
14 just great to have brush on both sides of the streambank,
15 but that is not really how our streams are working.

16 And, also, when this streambank, when this
17 gravel, continues to build and pushes this, like in the
18 Potter's Creek and many other situations, you've got
19 masses, tons and tons of topsoil that is going into the
20 creek that is covering up fish eggs and everything else.

21 But I've never heard that discussed, what the
22 impact of this buildup is on sediments in the stream.
23 It's never been discussed.

24 Okay. I'll read my statement. Thank you.

25 All along, I have asked for common sense in

1 this issue. I just think these things need to be looked
2 at in the common sense kind of way, and we've never been
3 able to do that.

4 So let's see.

5 And I'm just going to read that -- read this to
6 save time.

7 Where are we after months and months of
8 meetings and discussions on the sand and gravel mining
9 issue? What has happened?

10 In the beginning, DNR placed its new
11 regulations in the Register, no inputs from private
12 citizens or industry. DNR admits a few people within the
13 Bureau of Land Reclamation drafted the regulations.

14 Due to opposition by industry and concerned
15 citizens, DNR decides to holds hearings and gather public
16 input on the issue according to the law.

17 DNR is told by the Texas County Commission that
18 they have violated the law contained in the Federal NEPA
19 Act by not involving Texas County in the discussions
20 about the economic impact of Texas County.

21 DNR decides to form a committee to look at the
22 issue.

23 And I might add, Farm Bureau and Texas County
24 has about 700 members, households. The Texas County
25 Commission -- or Texas County population is about

1 24,000 people, and Missouri Farm Bureau, with whom I
2 introduced a bunch of new policy at their meeting last
3 fall, asking you guys to look at the economic and
4 scientific impacts of this, and it passed basically
5 unanimously. They have 103,000 members in the state.
6 They're the largest ag organization in the state.

7 So there is a lot of people on our side too.
8 It's kind of funny, when I hear people talking about a
9 thousand people -- and as far as the fishing -- as far as
10 the individual that stated, anybody who fishes is not
11 opposed, I fish.

12 As a matter of fact, I've spent
13 \$40,000 building ponds to hold fish, and I fish right out
14 my front door, and I'm concerned about this issue.

15 And I know many others are. Most of the people
16 in our county that are opposed to this issue fish.
17 That's pretty common in Texas County.

18 The majority of this group -- okay. I'll back
19 up.

20 DNR chooses who is on the committee to review
21 the regulations. A majority of the group supported the
22 regulations when this group was first formed.

23 When the minority finds out the votes will be
24 taken on each regulation to see if it stands, the
25 minority cries foul, as many individuals supporting

1 regulations work for the government, several from the
2 same agencies, and you remember that discussion.

3 These individuals decided not to vote, which I
4 think was right. Now the minority is the majority.

5 The majority of the group asked to see the data
6 on economic impact of these proposed regulations.

7 It is discovered that no economic studies have
8 been done on any of the proposed regulations.

9 And the lady from the Sierra Club, we talked
10 about the economic impact, and she was supportive. She
11 would have liked to study the economic impact of these
12 regulations. We weren't able to do it.

13 The majority asked about any pertinent
14 scientific studies on the effects of gravel mining in
15 Missouri. No studies were presented for Missouri.
16 Studies from the Pacific Northwest, the Desert Southwest,
17 Indonesia, other areas were presented.

18 Because of the great differences in soil types
19 and conditions, the majority questioned the applicability
20 of these studies toward Ozark streams.

21 The majority is told that DNR doesn't have the
22 time or money to do studies on this issue.

23 The work group is told by the facilitator, who
24 is paid by DNR, that her boss, DNR Director Steve
25 Mahfood, has told her that the group has been assembled

1 to write regulations.

2 We are told by DNR that if we are not here to
3 write new regulations, then we should leave.

4 Any objections or questions about economics or
5 science are not to interfere with the regulation-writing
6 process.

7 Several object to the refusal to look at
8 economics and science surrounding the issue.

9 We are told by DNR that new regulations must be
10 written, and there is no time to look into these issues.

11 Again, it was made clear to the work group that
12 if we refuse to begin writing the new regulations or
13 guidelines, then we should leave.

14 Most of those that objected chose to stay to at
15 least be able to have input into the wording of these
16 regulations.

17 If we leave those who support regulations, we
18 felt like they would write whatever they wanted to
19 without any opposition.

20 The work group begins writing regulations. The
21 votes is taken whether or not the new regulations should
22 be guidelines or not -- should be just guidelines and not
23 regulations.

24 The majority votes that the wording that we are
25 working on should not be adopted as regulations but as

1 guidelines.

2 It is clear to me DNR will want these to be new
3 regulations, as they made it clear, they want the force
4 of law and the ability to levy fines.

5 I personally have tried to come to these
6 meetings with an open mind and listen to the facts about
7 this issue. I've read all of the studies and been to all
8 but one of the meetings.

9 I still don't know the economic impact of these
10 new regulations. How will these new regulations impact
11 the following areas: the cost of sand and gravel? We
12 don't even know what will happen to the cost of sand and
13 gravel.

14 The availability of sand and gravel, the impact
15 on concrete prices, the impact on road costs at local,
16 State and Federal level, the impact on machinery dealers
17 to supply the industry, the impact on people thinking
18 about getting into the business or staying in.

19 I've already heard of people that haven't got
20 into it because of the additional regulations that
21 they're looking at, that they're afraid will be enacted.

22 Will we lose local jobs? We don't know. The
23 impact to our local tax base? We don't know that.

24 The economic impact to the people who own sand
25 and gravel, the local landowners? We don't really know

1 that.

2 How hard will it be for DNR to add a few feet
3 to the ten-foot buffer zone restriction? I don't know.
4 I don't know what the process is you guys have to go
5 through to add -- change that 10 to 20 to 50 to 100. And
6 many are proposing 20 to 100 feet, which would eliminate
7 gravel mining in our county.

8 A new study reveals that the vast majority of
9 gravel mining isn't in compliance with the guidelines.
10 That is a new study that was just released.

11 What, 66 percent of gravel mining on -- on one
12 issue that were not in compliance.

13 So we have a vast majority of the gravel mining
14 that is taking place out there isn't in compliance with
15 even the guidelines, for whatever reasons.

16 DNR maintains that adopting these new
17 regulations won't have an economic impact of over \$500.
18 This new study proves beyond a doubt that DNR has grossly
19 underestimated the cost of gravel miners and the rest of
20 our Missouri economy. That's just -- that's just common
21 sense.

22 If there is that many that aren't even
23 complying with the guidelines, there is going to be a
24 tremendous cost, and there is a tremendous amount of
25 gravel that is not going to be able to be mined.

1 And I think the things that I raised here, the
2 issues there on actually what has happened to the stream,
3 are vitally important as we look at what is going on with
4 our stream.

5 Because these new regulations remain virtually
6 unanswered, as none of them were dealt with by this work
7 group, because DNR refused to take the time for the work
8 group to address economic issues.

9 The majority of the group wanted to look at
10 these issues but was denied the ability to do so.

11 I might add that the Missouri Farm Bureau
12 states that DNR should study the economic and scientific
13 impact of these new regulations before adopting any.

14 The work group seemed to be expected by DNR
15 staff to accept studies done in other countries and
16 states, none of them in Missouri, I might add, as to the
17 impact of sand and gravel mining to our Ozarks streams
18 are.

19 I can understand how headcutting can be a
20 problem on a stream in the Desert Southwest that has a
21 mud bottom and little gravel. I can understand that.

22 But I can't see how it could be a problem on an
23 Ozark stream with a rock bottom and an excess of gravel.

24 I think they're apples and oranges.

25 This headcutting issue is constantly being

1 cited as a huge problem by DNR staff. In our area the
2 huge problem seems to be too much gravel filling up the
3 stream, and causing, as I showed, streambank erosion.

4 No studies have been done to see if headcutting
5 can be a problem on gravel-rich, rock-bottom streams,
6 like the ones we have in the Ozarks Region.

7 Now, the example that was always cited about
8 the headcutting on, what, Camden County stream, I don't
9 know, you know. Maybe that was a problem there. I'm not
10 denying that that happened there. I don't know.

11 That looked -- from the pictures it looked like
12 it was a very -- you know, there was a lot of soil in the
13 area, a lot of clay in the area. I don't deny that that
14 could have been a problem there. I don't know enough
15 about that issue to really know.

16 I still have many questions about the
17 scientific aspects of gravel mining, such as -- and,
18 again, this is a little repetitive, but does excess
19 gravel in the stream constrict the waterway, forcing the
20 water to cut the streambank? I think it does.

21 I think anyone who watched me draw those
22 pictures -- I think there would be, you know, a little
23 question there, exactly what is happening in those
24 streams?

25 Does excess gravel reduce fish habitat?

1 The Conservation Commission removes gravel from
2 our State Parks to provide for trout.

3 Won't fish habitat be enhanced by gravel
4 removal?

5 And there was a later -- a letter on your site
6 by a trout fisherman. He was concerned about the trout
7 in our streams. And I'm concerned about the trout in our
8 streams.

9 But if they go into Montauk State Park and
10 remove sand and gravel every year, or every other year,
11 to provide trout habitat, you know, there is another side
12 to that issue, it looks like to me.

13 To just stand back and just, you know, bluntly
14 say, well, all gravel removal hurts trout habitat.

15 We just haven't looked -- we haven't looked
16 beyond that.

17 And, additionally, I'd like to see data from
18 the Conservation Commission about their gravel removal
19 activities in the trout parks and other streams. We need
20 an in-depth study on this issue.

21 And when I raised that issue in the hearing,
22 the Conservation Department didn't say a word. We got no
23 data. Nobody breathed a word about gravel removal in the
24 parks enhancing fish habitat. Nobody said -- okay.
25 What?

1 CHAIRMAN DiPARDO: I ran Meremac Springs for
2 ten years as a superintendent, and the only reason we
3 removed gravel out of Meremac was to make the holes
4 deeper so they could get more fish in, so more people
5 would have fishing ability.

6 There is no -- there wasn't any natural
7 spawning going on. If there was, it was very minute.

8 MR. PARKER: There is no minnows or other kind
9 of fish in there?

10 CHAIRMAN DiPARDO: Well, yeah, there is minnows
11 in there, yeah.

12 MR. PARKER: You don't think they hatch in the
13 gravel?

14 CHAIRMAN DiPARDO: You know, I'm not saying
15 that.

16 But I'm saying that the reason they cleared out
17 Meremac Spring and they brought in a drag line was to
18 make the holes deeper, so more people could come in and
19 fish.

20 MR. PARKER: Exactly. Exactly my point.

21 CHAIRMAN DiPARDO: I mean, that's where your
22 fish -- that's where the trout were hanging out at.

23 MR. PARKER: Exactly my point.

24 We agree 100 percent.

25 CHAIRMAN DiPARDO: So that's what they did

1 there.

2 MR. PARKER: We agree on that.

3 Doesn't leaving vegetation on the gravel bar
4 force the water to the opposite bank and cause
5 in-stream -- increased streambank erosion?

6 Like I mentioned before, I understand, again,
7 about the issue with sediments covering fish eggs. But
8 if gravel left in the stream causes -- now, listen to
9 this.

10 The issue with sediments covering fish eggs.
11 If gravel is left in the stream, causes
12 in-stream -- increased streambank erosion, couldn't
13 sediments be reduced by gravel removal?

14 The proposed ten-foot buffer zone is very
15 problematic, one, allowing brush to grow on the gravel
16 bars on the inside bend of the river, cause more water
17 pressure and velocity on the opposite streambank, causing
18 increased erosion and sediment, such as is taking place
19 on Potter's Creek in Texas County.

20 And, you know, Bill Turner, you know, God love
21 him, got up and had an hour, or however much time he had
22 to talk about this.

23 And when he was up there, I said, Bill, you
24 know, what is causing that streambank to erode, not the
25 gravel side but the high side of the stream? What is

1 causing that to erode?

2 And he said, well, the dirt is just falling off
3 and the gravel follows it.

4 Now, like my example of the car door and taking
5 a curve and more pressure, there is more pressure as the
6 brush and gravel builds on the inside of it. There is --
7 any studies would show there is a greatly increased
8 pressure on that opposite bank that is forcing that dirt
9 to cave off there, but we don't have any studies to show
10 that.

11 I also understand that Bill Turner, you know --
12 and I don't have a personal thing about Bill Turner. I
13 just completely disagree with a lot of the things he
14 says.

15 But I understand that Bill Turner trains gravel
16 mining inspectors for DNR.

17 Do his views represent the general views of
18 policy of the Conservation Department?

19 I can only assume they do.

20 I believe these policies will be a disaster for
21 our Missouri streams.

22 Again, just common study, Potter's Creek in
23 Texas County, to see the results of this junk science.

24 Not one of the instance of a benefit of gravel
25 removal was presented by anyone opposed to gravel mining.

1 Has DNR's approach to this issue been fair and
2 balanced? I don't think so.

3 If gravel removal is helpful to our streams by
4 improving fish habitat and reducing streambank erosion by
5 opening the water channel to allow for water, to reduce
6 pressure on the opposite bank, then we could be doing
7 exactly the wrong thing for our fish and our streams and
8 our rivers.

9 We have listened to the so-called experts from
10 the Conservation Department about multiflora rose and the
11 otters. We need to start making regulatory decisions
12 based on more than emotions and opinion.

13 We need sound science, and, additionally, we
14 must know the economic impact of these regulations.

15 If you don't think we need to worry about the
16 economic impacts, just tell it to Missouri schools,
17 the -- or the Department of Transportation.

18 How much more will it cost to build a road if
19 those who oppose gravel mining have their way? What is
20 it going to cost?

21 They propose hundred-foot buffer zones in our
22 streams in our meetings. That would virtually end sand
23 and gravel production in the Ozarks.

24 Where will the aggregates come from for our
25 construction projects?

1 We all drove on a road to get here.

2 Where is it going to come from, the sand and
3 gravel?

4 Will it be dredged from the Missouri River?
5 Are they going to dredge it from the river?

6 What will it cost to transport it down to the
7 Ozarks? What about environmentalists already trying to
8 shut down dredging in the Missouri River? I understand
9 there is issues with the dredging.

10 Why has MoDOT refused to get involved in this
11 issue? I've personally asked them to look at this issue.

12 It appears they don't understand the impact of
13 this issue, but then they don't seem to really understand
14 the impact of several other issues either.

15 When I became involved in this issue, I
16 suspected in a general way that regulators don't really
17 understand the impacts of the regulations.

18 After working through this process, I have
19 realized that my first fears about DNR have been
20 confirmed. This is an agency that is out of control, in
21 my opinion, with no concern for taking a balanced look at
22 this issue.

23 My only hope is that the Missouri Legislature
24 or the Governor will get involved in overseeing DNR and
25 other regulatory agencies.

1 Additionally, I believe the counties located in
2 the Ozarks should bring a class-action suit against DNR
3 if these regulations are adopted.

4 Of course, that's a last choice. I would hate
5 to see it come to that. I would hope that reason would
6 prevail, or at least some common-sense studies could be
7 looked at with input from both sides.

8 The claim by DNR that the impact of these
9 regulations is not more than \$500 to the entire state is
10 unbelievable.

11 DNR's position seems to be, stop us if you can.

12 In the strongest possible terms, I urge our
13 elected officials to put a stop to the extreme activities
14 of this agency.

15 I also urge our elected officials to demand
16 proper time be spent looking at economic and
17 environmental issues involved in gravel mining.

18 DNR Director Mahfood personally promised me in
19 a letter in the Rolla paper that these issues that I have
20 raised would be looked into. This is a promise that
21 Director Mahfood did not keep.

22 DNR's slogan is excellence and integrity in all
23 we do. Their new slogan should be, we do anything we
24 want to do.

25 That's the end of mine.

1 Are there any questions?

2 Thank you for your time.

3 (PARKER EXHIBIT NOS. 1 THROUGH 3 WERE MARKED
4 FOR IDENTIFICATION BY THE COURT REPORTER.)

5 CHAIRMAN DiPARDO: I had Ken Midkiff.

6 You had something?

7 MR. MIDKIFF: Yes.

8 (Witness sworn.)

9 MR. MIDKIFF: Mr. Chairman, members of the
10 Commission, my name is Ken Midkiff. I'm the Conservation
11 Chair of the Ozark Chapter of the Sierra Club. That is
12 the statewide environmental organization.

13 Our membership varies, but we have somewhere
14 between 10,000 and 13,000 members in the state of
15 Missouri. It varies with whoever is in the White House.

16 So our membership, I suspect, is on the upper
17 end of that scale.

18 I want to address you on the proposed
19 amendments to sand and gravel regulations, but before I
20 get into specific points of concern, I must remind this
21 Commission that streams and aquatic life will be
22 negatively affected by any excavation within streambanks.

23 So don't try to justify such activity or any
24 lessening of the regulations, of our previous guidelines,
25 as attempting to allow gravel mining to occur while

1 absolutely preventing environmental damage.

2 Sand and gravel mining does degrade the
3 environment, the goal of the state, and we share that
4 goal as apparently to lessen or minimize that damage. We
5 are not absolutists and realize you absolutely cannot
6 prevent or prohibit damages.

7 As are many Sierra Club members, I'm an avid
8 canoeist, and I've been canoeing in the streams of Texas
9 County since mid '70s.

10 I didn't even have any gray hair then, and I
11 had more hair.

12 And with all due in modesty, I am also a fairly
13 good fisherman. I've caught my share of smallmouth,
14 goggle-eye and largemouth, crappie, white bass.

15 In both of these roles, as a canoeist and a
16 fisherman, I have seen the unmitigated damages done by
17 gravel mining operations, from Beaver Creek in Taney
18 County, to Tavern Creek in Miller County, to the Little
19 Piney River in Phelps County and Pulaski County, and I
20 think it goes into Pulaski County.

21 Canoeing and fishing have been degraded by
22 gravel mining operations. There is simply no way, no
23 way, to remove large quantities of in-stream gravel
24 without causing sedimentation, siltation and disruption
25 of stream flow.

1 I won't get into headcutting, because you've
2 heard too much on that already.

3 I can point to areas that were once very
4 productive, smallmouth and goggle-eyed pools, that are
5 now filled with sand and gravel from upstream operations.

6 Last summer, not 10 years ago, not 20 years
7 ago, but 2003, several canoeists and anglers on Beaver
8 Creek in Taney County called me to report on gravel
9 mining operations that had resulted in heavy damages to
10 that stream.

11 I, in turn, after obtaining this exact
12 location -- one of the persons had one of those GPS
13 things filed against with Department of Natural
14 Resources, I think it was Larry Coen at the time, with
15 the U.S. Army Corps of Engineers, Larry Harrison, in
16 Little Rock, and also called Chris Patella (phonetic
17 sp.), who is the District Fishery Supervisor with the
18 Missouri Department of Conservation in Springfield.

19 It turns out that no one in any State or
20 Federal agency were even aware of the sand and gravel
21 operations, and certainly none had monitored the sand and
22 gravel operations. And it is likely that no State or
23 Federal agency will do so in the future.

24 Therefore, reporting illegal fly-by-night or
25 damaging operations will be left to citizens, to

1 canoeists, to fishing organizations, to conservation
2 groups.

3 Since the Sierra Club is in adamant opposition
4 to the proposed lessening of restrictions and conditions,
5 we will be watching more closely. This comes under the
6 heading of, be careful what you ask for.

7 Since we were involved in the last go-around on
8 those rules, I think it was in 1994, Gerald Ross had
9 those up -- Randy is gone -- were you there, Dan?

10 There were several other people there at the
11 time.

12 We did not entirely -- while we weren't
13 entirely happy, we were willing to go along with the
14 conditions. So we did not alert our members to
15 proposed -- to report damaging gravel mining operations.

16 We will now do so if these proposed rules are
17 adopted as is because we see a real threat to canoeing
18 waters and to fishing.

19 Those are my general comments.

20 Now, let me address significant areas of
21 concern. We have others, but these are the major points
22 of concern.

23 A buffer zone -- number one, a buffer zone of
24 10 feet from the water channel is not sufficient to
25 protect water quality or aquatic life.

1 We had supported 25 feet in previous iterations
2 of these rules or guidelines, and that got compromised to
3 20 feet.

4 Well, 5 feet, we figure we can live with that.

5 But it takes only a mild rise of water levels
6 to inundate, completely cover an area only 10 feet from
7 the flowing water channel.

8 I can tell you right now that if canoeists and
9 anglers observe a backhoe, a front loader or a conveyor
10 operating only 10 feet from the water channel -- that is
11 about from here to that wall -- there will be complaints.
12 There will be. I guarantee it.

13 Number two, it is totally inappropriate for
14 sand and gravel operations to be conducted in losing
15 streams.

16 By the very definition, these waters lose their
17 flows, because surface water becomes groundwater.

18 If the groundwater is contaminated, private
19 drinking water wells will become unusable.

20 In addition, much of the water from losing
21 streams goes into caves, which we are blessed. We're the
22 second state in the Union, Tennessee being first, with
23 the number of caves.

24 In my home county of Boone, a swallow hole,
25 which is called there, just north of the 163 bridge in

1 Bonne Femme Creek, provides much of the stream flow in
2 the Devil's Ice Box Cave, which is owned and managed by
3 Missouri State Parks, a division of Department of Natural
4 Resources, and is home to the rare Pink Planarian.

5 Other caves support other endangered species.
6 There is an endangered cave fish, which the Natural
7 History Division of MDC knows all about.

8 There are numerous other examples. And the
9 MoDNR folks and the MDC staffers know where those are and
10 should be aware of the sensitivity of the waters and
11 losing streams, but we see nothing in these rules to
12 protect them.

13 Number three, no sand and gravel operations
14 should be allowed for five miles above stream segments
15 designated as outstanding national or state resource
16 waters.

17 To allow this will likely lead to violations of
18 antidegradation laws and rules. Water quality will
19 suffer. And the antidegradation laws and rules prohibit
20 any degradation of water quality within outstanding state
21 and national resource waters.

22 You can devise all of the State rules you wish,
23 but you cannot ignore the provisions of the Federal Clean
24 Water Act, nor can you change the laws of the universe.

25 Finally, I wish to address an issue that has

1 been a bone of contention and controversy.

2 There is no absolute right to conduct sand and
3 gravel mining in waters of the United States. While
4 landowners may own the stream bottom, they do not own the
5 water itself. The water belongs to everyone.

6 Sand and gravel mining can only legally occur
7 with a valid 401-404 permit issued under Sections 401 and
8 404 of the Clean Water Act.

9 As Jim Hull pointed out, the U.S. Army Corps of
10 Engineers issues the 404 permit which allows operations
11 within the streambank, and gravel operations -- I can
12 repeat -- can only legally occur with a valid 404-101
13 permit, with appropriate conditions.

14 This has nothing whatsoever to do with private
15 property rights. It has everything to do with the
16 degradation of everyone's waters, the waters of the
17 United States.

18 The conditions of this rule that will lead to a
19 permit, which is nothing more than permission from us,
20 are not protective.

21 They are, in fact, an acquiescence to those who
22 see profit from sand and gravel, where others see the
23 value of clean water and a healthy fisheries.

24 I would urge you to, one, reinstate the 20-foot
25 buffer; two, prohibit gravel mining in losing streams;

1 and, number three, prohibit gravel mining for five miles
2 upstream of outstanding state resource or national
3 resource waters.

4 And I thank you for your time.

5 CHAIRMAN DiPARDO: Thank you.

6 Comments, Commissioners?

7 Thank you very much.

8 (MIDKIFF EXHIBIT NO. 1 WAS MARKED FOR
9 IDENTIFICATION BY THE COURT REPORTER.)

10 CHAIRMAN DiPARDO: Is there anybody else in the
11 audience that would -- have you filled out one of these
12 yet, sir?

13 MR. FISCHER: Roger Fischer.

14 When I came, I didn't realize I'd have any
15 interest in speaking today.

16 (Witness sworn.)

17 MR. FISCHER: I appreciate the opportunity to
18 speak.

19 I came today to learn. Three weeks ago I
20 applied for my permit. My father-in-law has -- I've been
21 married for 20 years. My father-in-law has a small
22 stream -- well, he's got a farm, 120 acres, up north here
23 in Callaway County, and he's got a stream in it that
24 during normal -- normal pools, probably eight to ten feet
25 across.

1 And, of course, when the water comes up, it
2 gets wider; and when the water goes down, it can get
3 narrower.

4 One particular gravel bar he's got there makes
5 a typical meandering-type stream, and it comes out and it
6 makes a big bend and it comes around.

7 And the stream is on this side.

8 But on this bank it's really steep, and it's
9 got vegetation in it, large wooded pasture.

10 And then this side, the original, of course,
11 being a meandering stream, the old tree line kind of
12 follows along like that.

13 Now, the distance here is probably 30 feet.
14 Out here it's about 75 to 80 feet. Over here, again,
15 we're back into, say, 30, 40 feet wide.

16 Now, when the water comes up and we have the
17 big washout flooding, this gravel bar is relatively steep
18 from the water up to this wooded bank on this side.

19 Well, the water keeps washing out his wooded
20 pasture over here, and it fills the stream with the
21 sediment, because it's just black -- it's good soil for
22 growing crops but it's not good -- it's not rocky and
23 it's not sandy. It's just the sediment that is
24 underneath that tree from the open bottom.

25 Well, what I've got, he'd like to remove some

1 of this gravel off of this big bend to prevent further
2 erosion of this bank on this side.

3 This stream across here is probably 65 feet in
4 diameter, 65 feet across now, but the water just runs
5 through a small channel, but it's washed out these trees.

6 Of course, you have trees laying along the side
7 of this eroded bank.

8 Every time the water comes up, it takes more
9 out. Now it's developed a doggone island out here that
10 is nothing but dirt and trees of various sizes.

11 This island will eventually wash out and become
12 part of the stream bottom, and it's just going to be mud.

13 This area here has some decent gravel and a lot
14 of fine sand in it.

15 Well, as this goes on down alongside of the
16 stream here -- in many cases it's not even wider than
17 this room. This room is about 34 feet wide, if I
18 calculated it right. These tiles are about two feet
19 across in width.

20 If I've got to contend with -- this area where
21 I have 35 and 40 feet here of gravel and I've got to
22 contend with a ten-foot buffer zone on each side -- let's
23 say the stream would be on this side and the floor would
24 be the water surface.

25 Now, I can mine down to the water surface, if I

1 understand this properly.

2 On this side I've got the bank with the big
3 trees on it, and I have this gravel bar in the middle.

4 On this side it's probably chest deep in
5 gravel. If I step out here about ten feet, I am above
6 belt level. If I come in from this side, the water level
7 down here, I come in ten feet, I'm probably up knee high
8 in gravel.

9 And as I understand it, if I have to come in
10 ten feet here or more, I come in ten feet from there or
11 more, I'm going to have a width down the middle of this
12 thing that is about 14 feet wide, and it's going to come
13 up real nice off of that -- off of the water, and then
14 all of a sudden it's going to be -- I'm going to come
15 down through here with my loader and take this gravel
16 right out of the middle.

17 I'm going to have a strip that is 14 feet wide
18 at the water surface, and I've got water over here, which
19 is really the streambed, that is only six or eight feet
20 wide, with water in it.

21 Now, I'm not going to like the way that looks.
22 I'm going to have a doggone island of sand here. The
23 first time the water comes down through here and round
24 off that sand, I'm going to have an island of sand in the
25 middle and I'm going to have water on both sides.

1 The way it stands now, as I understand it, I
2 could be threatened -- I could line up to within a foot
3 or so of the water. The sand is only going to be about
4 eight, ten inches deep.

5 I can taper that back off, back over here to
6 this side. I think it's five feet from -- from here.

7 And it's going to make a nice -- it's going to
8 make a nice area here.

9 We're going to be able to remove enough gravel
10 out of here that it makes sense to even bother removing
11 it, and we're not going to end up eventually
12 rechannelizing this stream, except when it floods and
13 washes across.

14 I'm not -- I'm not trying to make any
15 particular point, other than I'm going to have a gravel
16 bar here, that if I have to hold back ten feet from each
17 side, I'm going to have a trough that runs around this
18 bend that is going to look similar to one of those big
19 stormwater drains that they have in St. Louis or in
20 Los Angeles, where you see them driving the race cars
21 down the middle of it. I'm going to have that right down
22 the middle of the gravel bar, right in the middle of a
23 pasture in Northcentral Missouri.

24 I guess what I'm asking is that we not change
25 the guidelines we have now and put mandatory ten feet or

1 greater buffer zones on either side.

2 Because if it's not me, it's going to be the
3 hundreds of other people that follow me, are going to
4 have to end up building a trench right down the middle of
5 a beautiful gravel bar, when we could kind of go ahead
6 and taper it down and make something that makes sense.
7 It won't redirect the water in the future.

8 I thank you for the opportunity to speak.

9 CHAIRMAN DiPARD0: Thank you.

10 Anybody else out there that has any comments?

11 MR. DELLERMAN: Is it possible for me to drive
12 the Army Engineer's part of that lake where it shows -- I
13 mean, in the river?

14 Because one thing that is being left out, and
15 that's the erosion line, and what is left out is the
16 gravel bed of that river.

17 And that gravel bed always comes down in a U
18 and comes up, and then above that, they call it erosion
19 line, is the topsoil.

20 So, of course, when that fills up with gravel,
21 the water goes over that natural bed and eats out the
22 topsoil.

23 This is found in any Army engineering book, and
24 that is what is being left out of all of this.

25 MR. MCQUERRY: Something else that I think

1 might have been left out is that -- is that when they
2 come in and measure the water levels -- and I understand
3 they measure, like, 27 different sites, from the Montauk
4 area all of the way down to the Arkansas line, they do it
5 on a regular basis.

6 My property is one of the properties that they
7 do this on. And they come in and they measure -- they --
8 basically they pop a string across the river, and they
9 measure the depth of the water every so many feet from
10 the gravel.

11 So it may appear that it's a losing stream
12 when, in fact, it's just filling up full of gravel and --
13 and appeared that it has lost some.

14 It may appear that it has lost flow and be more
15 losing when, in fact, it's just filling up full of
16 gravel.

17 CHAIRMAN DiPARD0: Yes.

18 MS. GARRETT: Could I address three issues that
19 was mentioned?

20 MR. MIDKIFF: I object to this. This is not a
21 debate. This is a hearing.

22 MS. GARRETT: I think I got permission to
23 address it though.

24 MS. RANGLES: Commissioners, from a legal
25 standpoint, you know, you set the rules for your hearing

1 and whether you want to hear from people again or just
2 say everybody had their shot, you know. And there is
3 still the opportunity to present written comments.

4 That's entirely up to you.

5 CHAIRMAN DiPARDO: Well, what do you want to
6 do?

7 As long as she's here, I'd just as soon like to
8 hear it.

9 MS. GARRETT: I've come a long ways.

10 MR. MIDKIFF: And I reserve the right to
11 respond after she does.

12 MS. GARRETT: That is fine.

13 If you guys could find that paper that I handed
14 out.

15 Something just came up that wasn't on this
16 paper on the -- page 2, paragraph 4, that states, for
17 some time sand and gravel mining has occurred without
18 specific stream protection, but then we just heard at
19 this meeting that you've got to get a 401 permit and a
20 403 (sic) permit.

21 How many permits are we going to have to get?

22 I mean, here it says that there is nothing here
23 to protect it, but then what we've just heard a while ago
24 is a 401 and a 403 (sic).

25 One gentleman talked about the money spent on

1 conservation for the fishing. I questioned that before,
2 and that money that was spent was not just fishing in the
3 river. That was in all of the lakes and everything.

4 I mean, if you take the gravel out, that money
5 is still going -- a lot of that money has been spent for
6 lake fishing.

7 The gentleman from the Sierra Club, if we did
8 what he wanted us to do, or what he claims the law states
9 we should do, is no mining in the streams, then Texas
10 County and all of these small counties wouldn't have any
11 of the tourist dollars, and we wouldn't -- all of them
12 would be going to the Lake.

13 CHAIRMAN DiPARDO: Do you want clarification on
14 those permits that Jim referred to?

15 I mean, are you --

16 MS. GARRETT: No. In here --

17 CHAIRMAN DiPARDO: -- the 401, and what was the
18 other one --

19 MS. GARRETT: I know what the 401 --

20 CHAIRMAN DiPARDO: -- the 404s?

21 MR. HULL: The Corps of Engineers makes a
22 determination on a case-by-case basis on whether or not a
23 404 permit is required.

24 For routine -- you understand, for routine
25 stream gravel mining, there is not a 404 required.

1 It's when there is excavation, dredging, that sort of
2 thing, maybe straightening of the channel, where they get
3 involved.

4 I'm not saying -- but every -- every stream and
5 gravel mining operation, to my knowledge, doesn't need a
6 404.

7 Only when a 404 permit is required is when a
8 401 certification is required.

9 A 404 comes first. And only when that is
10 triggered is a 401 certification required.

11 MS. GARRETT: We had a lot of FEMA work done in
12 Texas County from the May flood, and there was a 401
13 permit.

14 I mean, they withheld funds because they didn't
15 go and get the 401 permit to take care of the gravel out
16 of the streams. So -- and they -- the Corps of Engineers
17 seemed to think that they -- you had to get a permit --
18 told us that you had to get a permit on anything you took
19 out of the streams.

20 I may be mistaken, but that's what they told
21 us.

22 And like you said, on top of that, then there
23 is a -- I may be getting it fixed -- a 401 and 404, but
24 the clean water permit or clear water permit is on top of
25 that.

1 So we've already got -- the only reason I came
2 back up here is one of these -- the statement says we
3 don't have anything to protect the streams. We do.
4 We're already getting two permits.

5 CHAIRMAN DiPARDO: Okay.

6 MR. MIDKIFF: Ken Midkiff, and I believe I'm
7 still under oath.

8 I wanted to address some statements that was
9 just made.

10 There are nationwide permits which are done
11 under the 401/404 auspices, and there are several
12 categories of those.

13 And those, at least for road and bridge work,
14 which is probably what we're talking about, are
15 operations that don't impact more than one-- one-third of
16 an acre, I believe it's correct.

17 There are ten conditions on a 404 permit when
18 you do a major commercial gravel mining operation.

19 Those ten conditions are based on the
20 guidelines adopted in 1994.

21 So the gentleman who was up here talking about
22 the chart over there, under the current guidelines, he
23 would be restricted to operating actually 20 feet from
24 the vegetated bank and 20 feet from the moving water
25 channel.

1 So he would have less opportunity to remove
2 gravel now than he would under these current rules.

3 But I see that as a problem. Streams naturally
4 change course. Sand and gravel mining only hastens that
5 course changing.

6 Now, as to outstanding state and national
7 resource waters in Texas County, since we seem to be
8 focusing on that, although I believe we have 113 counties
9 in the State of Missouri -- I think there are
10 114 counties all together, and I would be interested to
11 know why all of this activity in Texas County, but there
12 are, indeed, outstanding state and national resource
13 waters in Texas County.

14 I think the Little -- the Big Piney River is
15 one of those, where it runs through national forestlands,
16 the Jacks Fork, the Upper Jacks Fork, is one of those,
17 and there may be others that I'm not aware of. But those
18 are three that I know of.

19 There are also losing streams, because there
20 are streams in Texas County that flow into caves.

21 Patty Creek (phonetic sp.) is one of those.
22 Now, it's totally on national forestlands and willow
23 areas, and presumably nobody is going to be doing any
24 gravel mining in there.

25 First of all, it would be very difficult to get

1 to.

2 But I did want to correct that the 401 permit
3 is a water quality certification done by the Department
4 of Natural Resources, and it does state that as long as
5 those ten conditions are met in the 2000 -- the 1994
6 guidelines, that DNR will certify that that project meets
7 the conditions necessary to achieve water quality
8 certification.

9 Thank you.

10 CHAIRMAN DiPARDO: Thank you.

11 I'm hearing from the other Commissioners that
12 we need to wrap this thing up.

13 MS. ADAMS: I'd just like to have a comment and
14 a question.

15 CHAIRMAN DiPARDO: All right. As long as
16 you're here, come on. You're it. You're the last one.

17 MS. ADAMS: Betty Adams.

18 On the pictures -- I won't draw one -- but what
19 we're trying to do is regulate the laws of nature, and
20 that's really hard to do.

21 All of these -- I have a bank too, but I also
22 have hills and hollows and a bluff and then the Big
23 Roubideaux River coming down. And every place that --the
24 creeks, the water flows down in between the hollows,
25 every place down into the Roubideaux where it flows into

1 there, the gravel comes with the water down through the
2 hollows and it goes into my Roubideaux.

3 Right here is all of my bottomland. Well, as
4 that gravel washes down from the hollows and the bluffs
5 from the little creeks into the bigger creek, the
6 Roubideaux, it makes the sand bar. That sand bar gets
7 bigger and bigger, and it has washed away acres and
8 trees.

9 The trees that are supposed to stabilize the
10 bottomland, they're all fell down, especially when the
11 floods come through. The roots are half showing.
12 They're almost gone, to where it's into the fenceline
13 now, and I have no trees that are holding the bottomland
14 in because of the gravel coming down between the hollows
15 on my property.

16 And so I just wanted to explain, that's just
17 one more aspect, and it's really hard to try to control
18 or regulate something like that. You know, we need to --
19 and that's constant. You have to take it out probably
20 every three, four years.

21 We never did. We never have. The gravel bar
22 is just growing bigger.

23 What we did do one year was we took in a loader
24 and we just made a big hole, because we had four kids.
25 We didn't have enough money to take gravel out or fix it.

1 We just thought we'd make a big hole for them to go
2 swimming in it.

3 That hole -- a drought came. The rain lessened
4 up. That was the only water there was that summer, and
5 there was big snapping turtles in there. There was big
6 fish in there. There was all kinds of things in that.

7 And it just makes sense. And the question is,
8 if you fish and you love fish, you would -- that was the
9 only place on the Roubideaux that year with a drought
10 that had turtles, fish, everything in there, plus my kids
11 could swim in it, because we had just made a swimming
12 hole, you know, but it was big enough for four kids and
13 adults.

14 So I -- my question is, if you like to fish,
15 what -- why wouldn't you want to remove the gravel?

16 Is there a hidden agenda behind leaving the
17 gravel in the creeks so that the fish can't live there?
18 You know, I don't know what the true agenda of the people
19 are that are representing the fishing industry.

20 Because it seems to me that year, plus the
21 other 15 years I've lived there, I had a lot more fish,
22 water, you know, everything.

23 Thank you.

24 CHAIRMAN DiPARD0: I would like to reiterate
25 that this is still open for comments until --

1 MR. LARSON: May 1st.

2 CHAIRMAN DiPARDO: -- May 1st, 2004.

3 So if you've heard anything here today that you
4 like or you dislike and you want to put it in writing,
5 send it off to us, and I guarantee you, the Commissioners
6 will get this.

7 I appreciate you all coming here and
8 enlightening us, and I thank you again.

9 And with that, thank you.

10 (Public Hearing concluded.)

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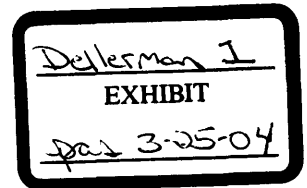
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CERTIFICATE OF REPORTER

I, Patricia A. Stewart, RMR, RPR, CCR, and
Notary Public within and for the State of Missouri, do
hereby certify that the witness whose testimony appears
in the foregoing deposition was duly sworn by me; that
the testimony of said witness was taken by me to the best
of my ability and thereafter reduced to typewriting under
my direction; that I am neither counsel for, related to,
nor employed by any of the parties to the action in which
this deposition was taken, and further that I am not a
relative or employee of any attorney or counsel employed
by the parties thereto, nor financially or otherwise
interested in the outcome of the action.

Notary Public within and for
the State of Missouri

My commission expires 01/26/07



To: Land Reclamation Committee
Dtd: Mar 25, 04

From: Citizen of Texas County, Missouri

Dear Committee,

Does the citizen have any decision on how this State addresses its issues? The governor of Wyoming is practicing democracy. There plan on the wolf issue was a reflection of the **will of the people**. Does Missouri governor also accept the will of the people? In our past meetings, I have quoted passages from the **Army Engineering** book and a college class's **Micro-Biology** book that shows the science on this issue. This statement that you received from me previously is science backed up by the very books that is being taught in colleges and in the Army! It is apparent that your gravel mining issue is not with the ecological science of rivers and streams, there has never been a debate about that. I presume this issue of using sand and gravel is of a political nature. Therefore, I will make my comments of a political nature.

A Streams and River law of the United States was read in the past meeting. It stated that a non navigatable river, class III, on the owners private land belong to the property owner. Today, you are still here debating regulations on private property as if a land owner doesn't have the right to his property taxed non-navigatable river or stream gravel! The law **and** the US Constitution was written so that a property owner would keep the right to use or give away all the gravel he wanted. Then why does the user of this resource -gravel- need a licence or permit tax when using a large amount? Sales tax is a different issue. The law states that a navigatable river's resources belong to the public and are **for the public's use**. Then why does the State of Missouri tax a resident for this gravel? Also a Missouri resident has to show a receipt for payment called a fishing licence tax before he can go fishing in public rivers and lakes? Tax, licence, and permit is when paying money to a government official for the use of something that does not belong to the government. The semantics of the words: tax, licence and permit is when money is given to a government.

Currently, when issues are presented to us, we are directed to comment on

the already proposed regulations and taxes that the LRC chooses as to regulate and tax our community's resources may it be called a tax, licence or permit. The law states that the Land Reclamation Committee must consider **all** comments and forward them to their superiors. You are chosen by your governor and not publically elected, so you are not accountable to the public, **but the Governor of the State is accountable!** In a representative democratic society, citizens or their elected representatives of a community are to have control over matters placed on the agenda for that community. This agenda of 'Sand and Gravel' is not an agenda of the citizens that live here, **it is the agenda of a non citizen that does not live here** . The question is **whether the non-elected decision-makers are adhering to the democratic process.** The guidance for LRC members who serve here are to give support for the '**peoples will**' of the citizens that live in these local areas of concern. Its that the State supports its citizens and not the citizens support the State!

How much time does the citizen commit to with this ongoing gravel issue before it is considered **unreasonable**? Some organizations, as the UNESCO, participates in the regulation of Biospheres and etc. in our land, trains and helps finance many organizations to fulfill UNESCO's agenda. The **Sierra Club** is an NGO affiliate with UNESCO. These NGOs are not elected by the citizens from areas of concern and neither are **they representatives of these communities of concern**. This raises the question of legality. Our nation has been managed under a democratic process by the will of the people and for the will of the people and sanctified by our Constitution . These community policy conflicts include issues like road upkeep that depend on using dry river and stream bed gravel, private ownership of timber use, gravel mining permits to take gravel from public and private land, losing private property to the UNESCO's Biosphere programs, and Desertification's regulations that may restrict the owner's use of his water and trees. All these policies tend to add to the list of conflicts! NGOs as the Sierra Club may show partiality towards the UNESCO's agenda and therefore **should not be considered in any decision making for a community** that the policies will effect. Only the communities of concern, to include their **Land Use Plan**, should be recognized by you (LRC). It is already a law that is still 'on the books' and should be honored respectfully.

The LRC have allowed inside area of concern citizens and outside area of concern **organizations** to participate in discussions that the LRC chooses. By the

LRC using comments from any people 'outside and inside the area of concern', you (LRC) can make claims that you have involved the concerned citizens in the development of policies. If this procedure of using 'outside' organizations, as the Sierra Club and UNESCO's guidance/regulations from the UNDP's Sustainable Environment program agendas (UNEP), **does not stop**, the LRC participation with these 'outside' organizations will make a mockery of our democratic process. As it stands today, many other countries make mockery of our democracy! If you honor the American way of democracy, you also will not make a mockery of the **presiding governor** that had chosen this LRC council! If the governor wants to honor our democracy, his guidance to you will be to consider the responses of the effected citizens of the community on this issue. The counties of concern has elected officials that are knowledgeable to determine the criteria of their own socio-economic make-up. Texas County has a **Land Use Plan** that, by law, makes the decision and not some non-community citizen or some Non Government Organization (NGO) to intrude in our own county policies.

The law of the land (written early 1800s for US of A) was read **out loud** at a former meeting at this LRC in Jefferson city last year (2003) about this gravel issue. The law stated that **non navigatable rivers, and streams, class III, belong to the property owner**. The gravel in shallow rivers and streams are part of the property that **belongs to the property owner** and therefore shall not need a permit to use a little or large amount of gravel. I find this meeting today unconstitutional and unacceptable under the Land Use Plan of Texas County.

-----End-----

Sincerely,
Richard David Dellerman
Citizen of Texas County,
Missouri

To: TRC, Jefferson City, Mo.

Dtd: Mar 25, 04

To: Department of Natural Resources, Jefferson City, Mo.

To: The Governor of Missouri

From: Concerned citizen of Texas County, Mo. USA

Below comments are from the <http://dnr.mo.gov> Web Site of Research Statement given by the Land Reclamation Program, attachment D of "Impacts of gravel mining"(Sand and Gravel Briefing Response). I would like to address these statements!

DNR

Brown, Arthur and Lyttle, Madiline 1994. Impacts of gravel mining on stream ecosystems.

University of Arkansas states:

1.) "Erosion results from gravel mining disturbances causes several problems in addition to altering channel morphology and undercutting riparian trees."

My reply: Erosion occurs when gravel builds up thereby raising the water level in that specific area. When it rains, sometimes the water level will raise even farther up and over the Soil Erosion Line's natural river bed. The Soil Erosion Line is located above the gravel bed of the river bank. Without removing these newly raised gravel beds, their newly sprouting trees and brush will change the river's morphology. All debris MUST be taken out of the river/stream bed so the raised gravel mound can be lowered down to the river's natural bottom's **gravel bed**.

Riparian areas are defined as:

*The dictionary defines: **Rip-** to tear apart or off. Another word defined: **Rip-** a swift current made by rising water. So the part of the word 'rip' in 'riparian' is referred to the ability for water to form gravel/ aggregate/ dirt banks by its current! **Riparian:** an area of water flow that formed aggregate banks; raised land masses in swamps, rivers, and lakes. **River Bank:** a mound or heap,*

raised aggregate formed from flowing water, a shallow place in water.)

Therefore riparian areas are where water is existing and where flowing water forms the river's, lake's, and swamp's morphology.

To keep top soil from washing away and changing the river's morphology, we must lower these high gravel mounds. Trees and brush must be taken out inside river/stream beds!

University of Arkansas states:

2.) Gravel mining will: "Fine sediments are released - - - increasing turbidity in the water."

"Catastrophic drift downstream - - - transported sediments"

My reply: Turbidity of sand will drift downstream when removing a raised gravel bank but:

when this gravel bank is left to close-in the width of a river making it narrower and/or shallower, this river current will flow faster and higher at this raised river bed site. When water level rise above the Erosion Point, "fine sediment" of top soil is released thereby creating a "catastrophic drift" of TOP SOIL "downstream". So, the gravel mining will prevent a catastrophic Top Soil drift downstream!

University of Arkansas states:

3.) "Aggradation buries - - organisms"

My reply: The stream and river's sand and gravel sediment continues to move by swift currents of water. When mounds of gravel builds up and eventually close-in the river's width, the water raises and the water current speeds up. This movement inhibits plant and algae to attach themselves to the riverbed but also more nutrients are released into the water. Microorganisms grow on stationary river-beds as well as fast moving water. Many types of "*organisms*" also attach themselves to moving "*aggradation*"!

University of Arkansas states:

4.) "When gravel is removed - - during floods turbidity is higher than normal". "channel deformation"

My reply: "When gravel is removed," this area will hold more water thereby slowing up the current and "turbidity" in that depend area. In all floods, aggregate turbidity is always moving down stream but where the gravel has been taken out down to the natural river bed, will help collect this sediment. Where there is raised

gravel mounds, "flood sediment" will collect on this water obstacle and enhance a channel deformation and erosion.

Brown, Kenneth and Curole, Jason 1993.

Effects of gravel mining and shell morphology

Louisiana State University states:

1.) "Gravel mining results in bank erosion" 2.) "- - mussels stranded in shallow meanders and pools - - that they choose to live in - - - but the pool level dries up as the river level drops." "Gravel mining has evidently eradicated the mussels".

My reply: Mussels live in sand or mud or are attached to rocks in shallow polluted water, page 3452 of Universal World Reference Encyclopedia, Library of Congress Catalog Card Number: 66-17303. Freshwater mussels are found in lakes, ponds, and streams in the central and southern United States. The Unionidae and Muteidae mussels during their early developmental stages are **parasitic on fish**. These mussel embryos are extruded into the water and become attached to and embedded in the gills and Fins of a variety of fish. In the edible mussel (*Mytilus edulis*, called the blue mussel, the eggs and sperm are shed into the water where fertilization takes place. In one and a half weeks it becomes an adult mussel. The embryo stays afloat for a month or so, held by a bubble held in a thread from a film in a good flow of clear water, page 1097, Encyclopedia Britannica, volume 15.

"These are a type of mussel that live in the raised gravel bed mounds but dies when the river level lowers". Gravel mining out these high gravel beds will enable the river to hold a greater volume of water in a rain storm. By widening and deepening this raised gravel mound will lower the water level farther below the Erosion Line of the river bed inhibiting a likely erosion from a rain storm. This is how gravel mining prevents "bank erosion"! As gravel fills up a section of the river, the water becomes shallower. **Some** mussels "choose to live in this shallow places." Mussels also live in the top part of the sand and gravel bed that is near the sides of the river bed/bank and also on the bottom of the river bed. So, by removing the raised gravel beds/banks will deepen these sections of built up gravel, the mussels won't have this "raised section for pools of water to exist and later dry up". This was stated in statements 1.) and 2.). So these type of mussels will congregate on the gravel beds located on the **side** of streams and rivers! So "gravel mining" will help stop the "eradication of these specific mussels"!

Summery

Morphology is a physical structure of geography ~~or an organism~~. This word

is used to a physical/structural change in riparian areas of rivers, lakes, and swamp areas. Changing the morphology of the river/stream by the erosion of top soil, and the dying of mussels are the results of raised river/stream beds. Many of the expressed reasoning from the Sand and Gravel Briefing given on this Web Site are not founded! Bridge Engineers will tell you that sand banks build up on one side of a river will create a faster current on the opposite side that will wash out the land that supports that side of the bridge.

The gravel taken out in these raised river beds is a service to our county's environment. I believe that the sand and gravel river mining companies are doing us a service and should be given support in doing so. Because of the Texas County Land Use Plan, the elected County Commissioners is the authority of all rivers and streams in our county. The State Governor can give support to the Texas County's stream and river maintenance instead of the Texas County's gravel mining operators giving support to the State by paying money to them for a gravel mining permit tax! Your support will show the people in Texas County that our governor governs: "For the people and by the people". I request that you remove unfounded and unwarranted regulations off the register.

Sincerely,
Richard David Dellerman
8235 Hwy 17
Bucyrus, Texas County,
Mo. 65444

March 25th 2004

Betty Adams
Texas Co., MO.

To: The Dept. of Natural Resources
Land Reclamation Committee

Does the average citizen have any voice left in how this country addresses its most conflict ridden issues? Maybe it's time citizens started focusing their attention on how democracy is supposed to function in this country.

Currently, when issues are presented to us, we are directed to "comment" on the proposed law. The law states that the agencies must "consider" comments, but if they want to throw them to the side, they are free to do so. They can do this because these individuals are not elected officials, and they are not accountable to the public. They have no job to lose. Consequently, a great deal of conflict is brewing over agency actions, especially conservation issues.

To address this problem, they created vehicles to involve the public in the planning and management of public policy items to resolve conflict issues. The most common vehicle includes what is called a Working Group. The comment process, coupled with Working Groups for public involvement, represent a whole new concept in Democracy. Working Groups do not have to be representative of community

interests. There is no set criteria for membership. There is no time limit to a working group's existence. Once formed, citizens then experience what I call "participation paralysis". How much time can a citizen commit to this process? At what point does this commitment, which represents their only opportunity to participate, become unreasonable? When the options become unreasonable, then the citizens' participation is neither adequate, effective, or equal. Agency personnel decide who will fill these positions. The public has no say. It is not uncommon to find that these positions are filled by people who support the agency's agenda, or people who would not be inclined to challenge them. Primary stakeholders should be given more than consideration as they experience the brunt of the economic impact as a consequence of the decisions that are made by these groups.

It has been the experience of most citizens that enormous barriers have been erected to prevent them from having meaningful input into the policy conflicts that they have been most affected by. While citizens outside the groups are allowed to attend these meetings, most don't, for a number of reasons; meetings may be held during working hours and often are; meetings are FAR from their homes; and they know they have no real power to affect decisions. What does this mean in the big picture? The agencies have created a non-democratic process for public participation in public policy development. By using comments, working groups, and resource advisory councils, the agency can make broad claims that they have involved the community in the development of their policies, and therefore, they have community support for their actions. In reality, the agency and these groups have all the power, and no accountability.

Currently, if a citizen is opposed to agency policy, the only thing he can do is to organize large numbers of people to collectively pressure the decision makers, or raise money and take them to court.

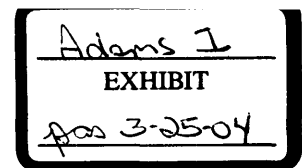
If the government wants to HONOR our democracy and involve the public in decisions that affect them, then they should at least do it right. The question is whether the unelected decisionmakers are adhering to the democratic process. In order to meet the criteria of the democratic process, they would have to create groups that reflected the social-economic makeup of the communities THAT WOULD BE AFFECTED by their decisions. The people who filled these positions would have to be elected, so that they could be held accountable to their communities for their decisions.

The agency could reallocate some of the billions of dollars that are allocated for these controversial issues to the affected counties, and they could integrate these elections into existing ballots.

After all, county officials are best equipped to determine the criteria of their own social economic environmental makeup, not agency personnel. Especially after your statement on the rulemaking report under Longterm: "Today it is unknown what the effects of sand and gravel extraction from the stream environment will be." Speak to the generations of families that live, own and use the streams. There was always good fishing and water deep enough to have baptisms in the summer. What went wrong? The conservation dept. has recently acknowledged publicly that releasing otters down in our streams was a mistake. Is D.N.R. making a mistake that will be obviously seen and felt in the future?

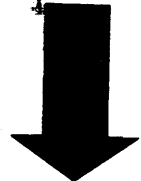
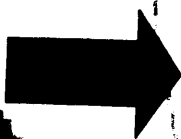
The democratic process is designed to make it much more difficult for bureaucrats to manipulate and control the direction that public policy takes. It also creates accountability. Only then will the policy that is developed and implemented reflect the will of the people in these communities, and only then can the conflict in goals between our government and its people be addressed.

Betty Adams
P.O. Box 307
Houston, Mo.
65483



Temper 1
EXHIBIT
DCA 3-2504

HEAD CUTS



Temper 2
EXHIBIT
pos 32504



ORIGINAL CHANNEL
SHAPE

CHANNEL
WIDENING



subject to the regulations of the Missouri Conservation Commission and the Laws of Missouri * * *. The court declared that plaintiff had "the legal right to carry his boat around obstacles in the river where obstructions preclude the passage of his boat, subject to liability for damage he might inflict on defendant's property * * * (and) the legal right to tie up his boat or to camp on said stream as long as he uses the stream bed, gravel bars and clearly recognizable area over which the stream flows during its normal stages". The trial court further ordered "that defendant desist in his efforts to hinder or close such free passage up and down the said stream".

Plaintiff by his petition sought to establish a right to stand on the privately owned banks of the river for the purpose of fishing therein, but the stipulation presented no such factual situation. The issue was not decided and is not before us on this appeal. Plaintiff, as respondent here, does not claim such a right as an incident to navigation. Members of the public have been denied such rights in other jurisdictions.

This case, involving as it does the relative rights of plaintiff-respondent as a member of the public and those of defendant-appellant as the riparian owner of both banks of the Meramec River at the place in question, must be decided with reference to its own peculiar facts.

We must first determine whether the Meramec River at the point in question is a "navigable river" in the broad sense in which that term is used when a determination of title to the bed of a stream is involved. The rule adopted in this state to determine whether or not title to the bed of a river is vested in the riparian owners is the rule adopted in the Federal Courts. The rule is stated as follows:

The test of navigability of a river, as stated by the Supreme Court of the United States, is that those rivers are navigable in law when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water. Another test is whether, in its ordinary state, a stream or body of water has capacity and suitability for usual purpose of navigation, ascending or descending, by vessels such as are employed in the ordinary purposes of commerce, whether foreign or inland, and whether steam or sail vessels.

Elder v. Delcours outlines the conditions under which the public has a right to fish and otherwise use riparian water for recreational purposes. Other states have similar, though not identical, legal rules.

Whether the public has the right to wade, float, fish, and portage around obstructions in the stream depends on the legal classification of the stream at the point in question. In Missouri, riparian water may be classified as (1) public navigable, (2) public non-navigable, or (3) private non-navigable.

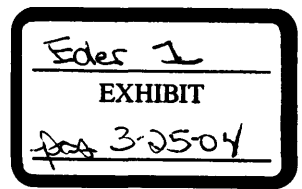
A stream is basically classified as public navigable if it is capable of floating commercial watercraft. The public has a right to fish in and use such streams for recreational purposes. In Missouri, the landowner adjoining the stream is considered to own land down to the water's edge, while the public retains ownership of the stream bed proper. However, in many other states adjoining landowners are considered the legal owner of the bed to the middle thread of the stream. The primary importance attached to ownership of the bed is whether the adjoining owner has the right to remove sand and gravel from it.

A stream which is too small to float commercial watercraft, but is sufficiently large to float canoes, small fishing boats or logs is legally classified as public non-navigable in Missouri. Here the adjoining riparian landowner's ownership encompasses the bed to the middle thread of the stream. However, as noted in Elder v. Delcours, a riparian's ownership rights are subject to the public's rights to use the stream as a public highway. Other states would simply say that private ownership rights in a stream such as this is subject to a public easement therein.

If a stream is too small to float canoes, small fishing boats and logs it falls into the classification of private non-navigable. Here, adjoining landowners not only own the bed to the middle thread, but also have the exclusive right to control the use of such streams. The general public has no right to fish in it or use it for recreational purposes.

Regardless of the type of stream, the public generally must restrict its use to the stream itself. For example, they usually have no right to camp on the bank of the stream. Rather, the landowner has the exclusive right to use the bank, and, as is true for the remainder of his land, he has the right to have people ejected for trespassing.

Casey 2
EXHIBIT
pgs 3-25-04



Land Reclamation Commission

Hearing on Proposed Amendments, 10 CSR 40-10.20 and 10 CSR 40-10.050
Pertaining to Commercial In-stream Mining of Sand and Gravel

March 25, 2004

My name is Steve Eder. I am the Fisheries Division Administrator for the Missouri Department of Conservation.

First, let me say that the Department clearly recognizes that the sand and gravel resource in our streams is a critically important commodity. It is not our intent to curtail the mining of this resource, nor do we subscribe to the misconception that one must exclusively select gravel or stream resources—to the detriment of the other.

The Department of Conservation understands that efforts to establish excavation standards in the Land Reclamation Program's regulations will not affect existing permit exemptions for: (1) individuals mining for personal use, or (2) political subdivisions using their own equipment and staff to obtain minerals for their own use.

Currently, Missouri does not have established excavation standards for in-stream mining activities. As a result, permit conditions for individual commercial operators often vary greatly—a fact that increases the risk of adverse impacts to stream systems.

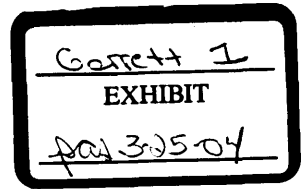
The Department of Conservation supports establishment of sound, enforceable, excavation standards within DNR's existing in-stream mining regulations for all commercial operators—large and small. Standards would help ensure mining activities are conducted in a method that provides Missouri's stream resources with a basic level of protection.

In summary, efforts to establish excavation standards within in-stream mining regulations are supported and would: (1) make progress toward addressing the existing "lack of consistency" associated with mining activities, and (2) provide basic extraction criteria to protect Missouri's streams.

The opportunity to share these thoughts with the Land Reclamation Commission is appreciated.

Linda L. Garrett

Texas County Assoc. Commissioner
10949 Prescott Road
Licking, MO 65542
W: (417) 967-3222 / H: (573) 674-3756



March 25, 2004

Re: Proposed In-Stream Sand & Gravel Regulations

To the attention of Land Reclamation Commission:

I come before the Commissioner representing the Texas County Commission and the citizens of Texas County, which as you are aware of is Missouri's largest county.

I am requesting that the Land Reclamation Commission withdraw the proposed In-Stream Sand and Gravel Mining Regulations from the Missouri State Register.

I am requesting this for the following reasons:

1. The Land Reclamation Commission nor DNR has complied with the Texas County-- State of Missouri Land Management Plan (Section LD 4 , WR2 &WR3). As I have stated many times before this Commission, the federal government gives counties the authority to adopt such a land management plan to protect our counties from harmful regulations.
2. DNR has not completed the required economic impact study before placing these proposed regulations on the State Register. They simple made an unproven statement that the added cost to public or private sectors would be less than \$500.00. The court cases alone if these regulations are not removed from the register will surpass \$500.00 for both public and private sectors.
3. Although DNR has supplied this Commission with their theories of improper ways of mining sand and gravel. These theories are just that and have not been proven. On the contrary there are sights in Texas County that can be proven that great damage has been caused to farmland, county roads and have threaten a state highway because gravel was not removed .
4. DNR has furnish false and misleading reports to the Land Reclamation Commission. I submit to this commission a 5 page report that was completed by DNR which contains many false and misleading statements. I sat on the workgroup referred to in this report and I am very disturbed with what this report is trying to indicate.

Time does not allow me to read this report to you but I have highlighted the false and misleading statements and I request that you read them carefully. When members of this workgroup read a report that we know is a lie, how can we believe other reports that have been prepared by DNR and other state agencies?

I am also submitting a letter I wrote to our governor . In this letter I stated how citizens of Missouri believe many of our state agencies have lost their integrity, accountability and right down common sense and I feel DNR is the next agency on their list.

I want thank you for giving me time to address this issue and once again I respectfully request that you remove the proposed "In-Stream Sand & Gravel Mining Regulations" from the state register.



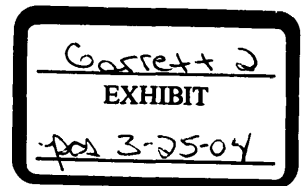
Linda L. Garrett
Texas County Associate Commissioner

Copies of all material I have given to the Land Reclamation Commission at this March 2004 meeting is being sent to the following:

U.S. Senator Jim. Talent
U.S. Representative Jo Ann Emerson
U.S. Attorney John Ashcroft
Missouri State Senators & Representatives
Missouri Association of Counties
County Commissioners Association of Missouri

Linda L. Garrett

Texas County Assoc. Commissioner
10949 Prescott Road
Licking, MO 65542
W: (417) 967-3222 / H: (573) 674-3756



March 15, 2004

Governor Bob Holden
201 West Capital Avenue
Jefferson City, MO 65101

Re: Integrity of Department of Natural Resources

Dear Governor Holden,

I'm sure you are aware that the Land Reclamation Commission has placed proposed In-Stream Sand and Gravel Mining Regulations on the Missouri Register, these regulations are to replace present In-Stream Sand and Gravel Mining Guidelines. This is something the Department of Natural Resources has been trying to do for years and they have worked extremely hard on this in the last three years. They have held various hearings and meetings on this issue in the last three years. I have attended most of these hearings and meetings. They have received very strong opposition in changing these guidelines into regulations at each hearing and at each meeting. The Land Reclamation Commission received a resolution from the County Commissioners Association of Missouri and the Missouri Farm Bureau in opposition to the change. They also received many oral and written comments opposing changing these guidelines into regulations from state senators, state representatives, land owners, sand and gravel mining operators, property right groups, concrete producers and etc. Now to be fair I must state the commission also received comments from different environmental groups and state agencies in support of the change.

DNR has put out more written material on this issues than the average person has time to read. They have shown many so called studies on this issue. Most of these studies were done in other states and even other countries. Their studies can be proven unrealistic for some of Missouri's streams, especially in the Missouri Ozarks streams.

I was asked by DNR to sit on a workgroup they formed to discuss this issue, I attended every workgroup meeting in Jefferson City over the course of four months. At every one of these meetings, the majority of the members in this workgroup stated time and time again they were against changing these present guidelines into regulations. At every meeting, the DNR representative leading these meetings made it clear to all members of the workgroup that we were not there to make rules or regulations, we were there to discuss the language in the proposed regulations. At one meeting she stated if we did not want to discuss the language of the proposed rules, we could leave. I feel this was a well planned trap on DNR's part for the opposing workgroup members. This was one of those darn you if you stay and darn you if you leave situations. The majority of this group were against changing these guidelines into regulations but we also knew if we left, the remaining workgroup members would make decisions that would devastate our Missouri streams, not to mention all the negative economic impact some

of their decisions could have on our counties and the entire state of Missouri. Although, we did continue to be part of this workgroup, we insisted on a vote of this group on whether these guidelines should be changed into regulations and the majority voted **NO**.

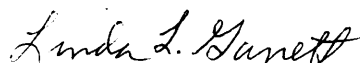
Here is why I question the integrity of the Department of Natural Resources. I now go to the DNR web site and read a five page report that has obviously been sent to the Land Reclamation Commission stating how this workgroup worked to **make** these rules and how we all agree to the language in these rules. This report is full of false statements and I feel it is completely trying to mislead the Commission and the general public. One statement in this report states the gravel mining operators (who were also part of this workgroup) said these regulations would not cost them any additional expense. This is an out right lie, I as well as many others were at these meetings and heard the operators state it would drastically increase their cost and that they would have to pass this cost to their consumers. It was stated many times during these meetings that these regulations would have a very negative economic impact for all of Missouri. This would particularly affect an already tight MO-DOT budget. This would affect the cost of commercial and residential construction including any new government buildings. DNR has been asked numerous times to complete both an environmental and an economic impact study. I feel it is another lie or at the least a misleading statement when they state in the register that these regulations will not have an increase cost of over \$500.

The state of Missouri already has some agencies that the public feels has lost their integrity, accountability and right down common sense and I feel DNR is the next one on their list.

I feel as our Governor you need to be aware of this issue. You need to know many citizens in Missouri are losing trust in these appointed agencies that do not listen to our state or county elected officials. These state agencies will not be held responsible when our streams are full of sand and gravel and are cutting away our farm land. They can simple say we made a mistake, when canoes can no longer float our streams or fish can no longer live in these streams. These agencies will not be held accountable for the rising cost that their regulations have placed on the citizens of Missouri.

As Governor of this great state, I feel you have an obligation to the citizens of Missouri to bring integrity back to our state agencies. If you look on the DNR web site it has right at the top of their page "Integrity and excellence in all we do". I'm from Missouri, **SHOW ME!!!**

Sincerely,



Linda L. Garrett
Texas County
Associate Commissioner

Sand and Gravel Rulemaking – November 2003 Rulemaking Report

- What is the purpose of the rule or rule amendment?

Sand and gravel mining is a highly emotional issue with diverse opinions on whether or not such mining should even be allowed, and if so the right way to accomplish it. The Missouri DNR Land Reclamation Program is charged with permitting, inspecting and releasing operators throughout the life of their sand and gravel permit activities. The agency needs to be consistent, fair and impartial in performing these tasks, and therefore needs standards by which to provide implementation. While there is some disagreement about whether or not such mining in Missouri streams should be allowed, there is general consensus that fair and consistent standards are needed. The purpose of this rule is to set a standard by which Missouri streams will be protected while extracting sand and gravel resources from the stream environment.

- What authority does the department exercise to carry out this rulemaking?

The authority for the department and the Land Reclamation Commission is found at 444.530 RSMo.

- What does the rule require and how does it produce environmental benefits?

The rule requires that operators stay out of the flowing water of a stream so that aquatic life is not disturbed, nor will the stream dynamics of the water movement be altered. Also the rule requires that the protective bank vegetation will be left in tact to aid in the control of erosion of the adjacent lands during high water events.

- Are there other effects (positive or negative) that may accompany the rulemaking?

Once these standards are in place throughout the mining industry, the department will be able to begin to measure the effects of mining on streams. A few years of this data that will be available after all operators apply the same standards of protection will help to determine scientifically how to amend the standards of stream protection in the future.

- What would happen without the rulemaking? (short and long term consequences)

Short Term:

The department and the industry have already experienced the effects of not having rules that outline stream protection standards. The industry has given testimony in both legislative and public hearings stating that operators currently have a variety of stream protection targets, depending on when their permit was issued, which inspector reviewed the application, comments from landowners and the public, etc. The industry prefers that stream protection standards be written into rule so that all operators have the same expectations of stream protection, and so that when new sites are contemplated, the operator knows up front what the stream protection goal will be and how to implement it.

This is not true, many operators have told me and have stated at meetings that they do not want regulations replacing the present guide lines. Some operators feel threaten by DNR.

This has not been proven.

There are times an operator must get into a stream to save a low-water bridge or to reach a gravel bar in the middle of a stream.

They claim to know gravel mining is causing damage to our streams.

unknown, means not known but they continue to state damages from gravel mining. Gravel mining has been done for years without any permanent damage or as stated unknown.

Long Term:

Today it is unknown what the effects of sand and gravel extraction from the stream environment will be. We have seen many sites where there are no apparent effects, yet some sites have resulted in permanent damage to streams, such as head cutting, bank destabilization, and downstream sedimentation. The desire for the long term is that proper and consistent stream protection will leave Missouri streams intact for future generations to enjoy.

- Are there other ways these benefits could be obtained? (and why they were not chosen)

There are no federal rules regarding stream protection standards, although there are provision of the Clean Water Act that do apply to degradation of streams. The US Army Corps of Engineers originally implemented sand and gravel regulation, based on that Act. However, a federal lawsuit in the late 1990's terminated the COE jurisdiction to perform this function.

This has already been lost in federal court.

Missouri could have implemented protection of its own through the Clean Water Act; however, the decision was made to regulate this activity through the Land Reclamation Act, since it is a mining activity.

For some time, sand and gravel mining has occurred without specific stream protection standards. The results of this have not been satisfactory to many groups because of the inequitable way that sites are regulated, because operators often do not know how to extract the gravel and protect the streams in the process, and because legal actions require specific standards by which careless actions must be judged.

The present guidelines should be enough stream protection.

Some comments have been made that landowners will ensure stream protection, and therefore rules are not needed. Landowners are indeed often the best stewards of the state's resources. However there have been many occasions in which landowners have been victims of extremely poor extraction practices and the damages that have occurred to streams in these cases have been devastating.

It was stated by DNR at a work group meeting that it could not be proven the damages were caused by gravel mining.

The Land Reclamation Commission, the Department and all the members of the stakeholder workgroup came to a majority consensus to write these stream protection standards into rule.

This is an outright lie. The majority voted to stay with present guidelines.

- Who is affected by the rulemaking? (who will bear the requirements and get the benefits)

Commercial operators who extract and sell sand and gravel will be subject to this rulemaking.

Landowners who extract the product for their own use and local governments who extract product with their own equipment are both exempt by statute. This rulemaking will not impact their exemptions.

Another lie, even if they do not have to get a permit, they would have to go by the regs. or be fined. This is encroachment on property rights.

Landowners and the public at large will benefit from standards of stream protection that will be implemented throughout the sand and gravel extraction industry. The operators themselves will also benefit by having published standards by which they can plan their business operations. They will not need to negotiate standards in order to make plans.

This is a statement that has not been proven.

- **How much will the rulemaking cost?** (private and public sector costs, even if federally required)

The operators were part of the process of crafting the language of this rulemaking. They publicly explained to the Land Reclamation Commission that this language would not add to their cost of mineral extraction. Likewise, there are no anticipated costs to public agencies.

During The Workgroup meetings operators repeatedly stated this would add additional costs to their operations.

- **Does the rulemaking have any effect on state revenue?** (how and how much.)

No, there are no changes to fees or costs by this rule to the state of Missouri. *These regs. will take more paperwork for both DNR + operators plus the extra cost in enforcing them.*

- **Why is the rulemaking being proposed now?** (the circumstances that brings about this action now.)

The jurisdiction to regulate sand and gravel mining by the Corps of Engineers was halted in 1998. In 1999 the Land Reclamation Commission first discussed the need for stream protection standards, and the first efforts to write these standards occurred in 2000. Between 2000 and 2003, the department has met numerous times with the public to discuss proposed rules. In late 2002 and early 2003, a workgroup appointed by the Land Reclamation Commission met monthly to craft these proposed rules. The Land Reclamation Commission voted in May of 2003 to use this language to formalize the stream protection standards into rule, and that brings us to this proposed rulemaking at this time.

To Craft means to make + this workgroup did not make these rules.

- **Who was involved in developing the rule?** (stakeholders, commissioners, citizens, organizations and any others that have had opportunities for input, review or other aspects of the rulemaking.)

Again we can not make rules and The majority was against these rules

The workgroup appointed by the Land Reclamation Commission to draft these rules were the following members:

Senator John Russell

Senator Sarah Steelman

Ms. Linda Garrett - Texas County Commission

Ms. Wilma Jeanne Urban - Texas County Planning Commission

Mr. Charles "Bud" Dean - Phelps County commission

Mr. Max Aubuchon - Gasconade County commission

Mr. C. Russell Wood - Ozark Property Rights Congress

Mr. Riley Godfrey - Private Landowner

Mr. Ron Hardecke - Private Landowner - Gasconade county

Mr. Bob Parker - Texas County Farm Bureau

Mr. Charlie Davidson - Private Landowner

Mr. Russ Andrews - Private Property Owner

Mr. Chuck Tryon - Private Landowner, US Forest Service (Retired)

Ms. Carla Kline / Ms. Cynthia Andre - Sierra Club

Ms. Becky Denney - Missouri Stream Team Volunteer

Mr. Al Agnew - Missouri Smallmouth Bass Alliance

I attended every workgroup meeting + I know what was said + done at these meetings.

Mr. Spencer Turner - Ozark Council, Trout Unlimited
 Mr. Robert Temper - Ozark Fly Fishers
 Mr. Steve Gough - American Fisheries Society (Missouri Chapter)
 Ms. Kim Dickerson - Associated Electric Cooperative
 Mr. Ted Heisel - Missouri Coalition for the Environment
 Mr. Randy Scherr - Mining Industry Council
 Mr. Mike Manier - Houston Redi-Mix
 Mr. Mike Yamnitz / Ms Brenda Roling - Missouri Concrete Association, Inc.
 Mr. Travis Morrison - Stewart-Morrison Redi Mix
 Ms. Jane Martin - Scott's Concrete, Inc.
 Ms. Cindy Peterson / Mr. Gary Peterson - Peterson Sand & Gravel Company
 Mr. James Schupp - Lake Ozark Sand & Gravel Company
 Mr. Ray Bohlken - Capital Sand Company
 Mr. Tom Beard - U.S. Geological Survey
 Ms. Suzanne Femmer - U.S. Geological Survey
 Mr. Rick Hansen - US Fish & Wildlife Service
 Mr. Louis Clarke - US Army Corps of Engineers
 Mr. Bob Ziehmer - Missouri Department of Conservation
 Mr. Michael Roell - Missouri Department of Conservation
 Mr. Bill Turner - Missouri Department of Conservation
 Ms. Mimi Garstang - Land Reclamation Commission
 Ms. Kara Valentine - Department of Natural Resources, Legal Counsel
 Mr. Scott Hamilton - Water Pollution Control Program (DNR)
 Mr. Tom Cabanas - Land Reclamation Program (DNR)
 Mr. Mike Larsen - Land Reclamation Program (DNR)

*IT was voted by the workgroup
 That These people would not vote
 on anything because they were
 fed & state employees.*

During public meetings before the Land Reclamation Commission, representatives from the industry, the concerned environmental organizations, public citizens, members of the legislature and their staff, representatives of public agencies and landowners were all given opportunities to comment about the rules. Everyone who wished to comment was given the opportunity to do so either in person, in writing or as a member of a commenting organization.

- **How has the development of the rule been shared with interested parties and the public at large?**

The Missouri Land Reclamation Commission, assisted by the Missouri Department of Natural Resources, worked with various stakeholders from 2001 to 2003 to review all the issues related to sand and gravel mining, and to come to consensus about stream protection standards that should be implemented by rule. This culminated in the currently proposed rules by way of a vote of the Land Reclamation Commission in May of 2003, and with verbal concurrence of each stakeholder group represented throughout the process. While selected individuals may not have been in agreement, spokespersons for each of the groups involved committed their assent to the current proposed rules.

*This is untrue the majority of the workgroup
 were against any regulations for in-stream gravel
 mining. The changes in the wording was meant for
 changes in the wording of the present guidelines*

- What information was used to prepare the rulemaking? (type, qualities and sources of information)

This scientific background is unproven & can be proven false.

Throughout the rule workgroup process, much discussion was held regarding the scientific background for the need to protect streams from the effects of sand and gravel extraction. All available research studies and supporting documents were collected and provided to the Land Reclamation Commission to aid in their ability to make an informed decision. This was presented in a binder with three sections.

The first section referenced research completed by the US Geological Survey in which the economic benefits of gravel extraction were compared with the costs of environmental protection, the changes in streams were documented as a result of mining practices, various types of stream damages were investigated as a result of mining, and some analyses of aquatic habitats were discussed. *Remember The unknown affects mentioned early.*

The second section referenced research completed in Missouri, principally by the Missouri Department of Conservation and the Missouri Department of Natural Resources. This research disclosed the damages that can occur in streams as a result of mining, along with discussions of how to best avoid causing these damages. There were also notes taken from various stakeholder meetings to document the concerns and thoughts of Missourians with interest in this topic. There were a total of four meetings held in various locations around Missouri in 2000, four meetings of the workgroup appointed by the Land Reclamation Commission in 2002 and two more formal hearings on the topic at commission meetings. *This is misleading at the least.*

This does not mention the expert witnesses that spoke at meetings stating negative affects by not removing gravel

The third section provided references to research completed in other states, with similar concerns and documented affects of the mining of sand and gravel from streams.

None of the research truly quantified stream protection measures. For instance, most references that included discussions about buffer zones emphasized the need for buffers but did not suggest the appropriate size of a buffer. Also references that discussed headcutting and bank destabilization did not specify what depth of mining would be protective of these damaging results. Clearly, streams must be protected or the adverse affects of mining will impair Missouri streams. The question of how to create stream protection standards and how to measure them was only determined through negotiated stakeholder workgroup sessions. The current proposed rules are that product of stakeholder consensus.

Again No proven affects. unknown

This is another lie

RECEIVED

MAR 25 2004

MISSOURI LAND
RECLAMATION COMMISSION

Jerry Jarosik
9511 Hale Drive
St. Louis, MO 63123

March 18, 2004

Staff Director
Land Reclamation Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

Re: Proposed amendment to sand and gravel operations regulations

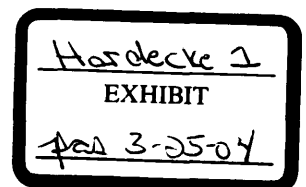
Dear Commissioners;

I appreciate the efforts of the commission in reaching a balance in the proposed excavation standards between protection of the streams of Missouri and the commercial value of gravel in those streams. The proposed excavation regulations are a minimum protection and should not be further compromised. Neither should there be any further delays in implementation.

Please complete final approval and commence the implementation and enforcement of the performance requirements as soon as possible to protect the resources of the state. Thank you for the opportunity to offer comments on the proposed amendments.



Jerry Jarosik



Ron Hardecke - February 27, 2003

Impacts of Gravel Accretion and Streambank Erosion

1. Soil Erosion - The erosion of streambanks and the riparian corridor causes the deposition of silt and gravel directly into the stream channel.

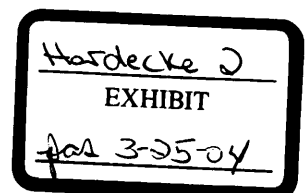
The erosion of the streambanks causes the loss of the riparian corridor and leaves a raw bank that will erode further.

In order to heal the raw bank, the pressure must be relieved by removing the obstruction (gravel and vegetation) from the existing stream channel.

2. Fish Habitat - The accretion of gravel in the existing stream channel has severely reduced the waterpool in the streams which reduces the habitat.
3. Water Quality - When stream banks erode, the soil and gravel are placed directly in the stream.

Solution: Government policy should allow and encourage landowners to use preventative maintenance to prevent streambank erosion and to allow for the repair of existing bank erosion by the removal /and or relocation of gravel, vegetation, and debris from the existing channel.

By using the on-site material (willows and gravel), repairs can be made to existing erosion sites at a more reasonable cost than by bringing in material. Also by using live vegetation for the repair the recovery time can be reduced by several years.





Hardecke 3
EXHIBIT

pas 3-25-04



Hardecke 4
EXHIBIT
for 3-25-04

Statement to Missouri Land Reclamation Commission, March 25, 2004

By Ken Midkiff, Conservation Chair of the Ozark (Missouri) Chapter of the Sierra Club

REF: Proposed amendments to Sand and Gravel Regulations

Before I address specific points of concern, I must remind this Commission that streams and aquatic life **WILL** be negatively affected by any excavation within stream banks. So, don't try to justify such activity or any lessening of the regulations as attempting to allow gravel mining to occur while absolutely preventing environmental damage. Sand and Gravel mining does degrade the environment, the goal of the State is apparently to **LESSEN** or **MINIMIZE** the damage.

As are many Sierra Club members, I am an avid canoeist. And with all undue immodesty, I am also a fairly good fisherman. In both of these roles, I have seen the unmitigated damages done by gravel-mining operations. From Beaver Creek in Taney County to Tavern Creek in Miller County to the Little Piney River in Phelps and Pulaski counties, canoeing and fishing have been degraded by gravel mining operations.

There is simply no way to remove large quantities of in-stream gravel without causing sedimentation, siltation, and disruption of stream flow. I can point to areas that were once very productive smallmouth and goggle-eye pools that are now filled with sand and gravel from upstream operations. Last summer, several canoeists and anglers on Beaver Creek called me to report on gravel-mining operations that had resulted in heavy damages. I in turn – after obtaining exact locations (one of the persons had a GPS device) – filed complaints with the MODNR, with the USACOE, and I called Chris Vitello, district fisheries supervisor with MDC in Springfield. No one from the state or federal agencies had monitored the sand and gravel operations, and it is likely that no state or federal agency personnel will do so in the future.

Reporting illegal, fly-by-night or damaging operations will be left up to citizens: To canoeists, to fishing organizations, to conservation groups.

Since the Sierra Club is in adamant opposition to the proposed lessening of restrictions and conditions, we will be watching more closely. This comes under the heading of "Be careful what you ask for". Since we were involved

in the last go-around on these rules (in 1994, I believe), while not entirely happy, we were willing to go along with the conditions – so we did not alert our members to report damaging gravel mining operations. We will now do so - if these proposed rules are adopted as is.

Now let me address significant areas of concern:

1. A buffer zone of 10 feet from the water channel is not sufficient to protect water quality or aquatic life. We had supported 25 feet in previous iterations of these rules, and that got compromised to 20 feet. It takes only a mild rise of water levels to inundate an area only 10 feet from the flowing water channel. I can tell you now that if canoeists and anglers observe a backhoe, frontloader or conveyor operating only 10 feet from the water channel, there will be complaints.

2. It is totally inappropriate for sand and gravel operations to be conducted in losing streams. By the very definition, these waters “lose” their flows because surface water becomes groundwater. If the groundwater is contaminated, private drinking water wells become unusable. In addition, much of the water from losing streams goes into caves. In my home county of Boone, a “swallow hole” in Bonne Femme Creek provides much of the stream flow in the Devils Ice Box Cave, which is owned and managed by Missouri State Parks and is home to the rare Pink Planarian. Other caves support other endangered species (a cavefish, for example). There are numerous other examples – and the MODNR folks and MDC staffers know where those are, and should be aware of the sensitivity of the waters in losing streams.

3. No sand and gravel operations should be allowed for five miles above stream segments designated as outstanding National or State resource waters. To allow this will likely lead to violations of anti-degradation laws and rules. Water quality will suffer, and the anti-degradation laws and rules prohibit any water quality degradation. You can devise all the state rules you wish, but you cannot ignore the provisions of the federal Clean Water Act.

Finally, I wish to address an issue that has been a bone of contention and controversy: There is no absolute right to conduct sand and gravel mining in Waters of the United States. While landowners may own the stream bottom,

they do not own the water itself – the water belongs to everyone. Sand and Gravel mining can only legally occur with a valid 401-404 permit with appropriate conditions. This has nothing whatsoever to do with “private property rights” and everything to do with degradation of ~~the~~ everyone’s waters.

The conditions of this rule that will lead to a permit – which is nothing more nor less than permission from the public - are NOT protective; they are in fact an acquiescence to those who see profit from sand and gravel where others see the value of clean water and healthy fish.

I would urge you to:

1. Reinstate the 20-foot buffer,
2. Prohibit gravel mining in losing streams, and
3. Prohibit gravel mining for 5 miles upstream of Outstanding Resource Waters.

Thank you.